Entered Nov. 7, 1936.

7 And afterwards to wit: at the November Term of said Court on the 7th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and comes also the defendant, Ralph Raynor, in his own proper person, and by his attorney, and said defendant files demurrer to count one of the indictment, which demurrer is as follows: (H. I.)

And said defendant now being arraigned upon count two of the indictment herein, for plea thereunto says that he is not guilty as charged therein.

Entered Nov. 12, 1936.

8 And afterwards to wit: at the November Term of said Court on the 12th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, alias Chess Fowler, each in his own proper person; comes also George R. Jeffery, attorney, and files appearance for said defendants, which appearance is as follows: (H. I.)

And the demurrer and motion to quash heretofore filed by defendant, Ralph Raynor, is now submitted to the Court, and the Court being duly advised, orders that said demurrer and motion to quash be, and the same are, hereby overruled, to which ruling of the Court said defendants except.

And said defendant, Ralph Raynor, being now arraigned upon count one of the indictment, for plea thereunto says that he is not guilty as charged therein.

And come also the persons drawn and summoned as petit jurors in this Court, and they are severally examined as to their competency for trial of this cause, and this cause coming on now to be tried, here comes a jury, to wit: Henry Giescke, Jos. M. Cummings, Ozro Legg, James W. Milhon, Ernest Warum, Marvin Foulke, D. L. Wheeling, Robert Hilger, Clintie Cochran, Thomas Cory, John S. Griffin, and Em-

erton Wolfe, who are duly impaneled and sworn, and having heard the evidence in part, and at the conclusion of the Government's evidence in chief, defendants file motion for directed verdict, which motion is as follows: (H. I.)

And the Court being duly advised, orders that said motion for directed verdict be, and the same is, hereby overruled, to which ruling of the Court said defendants except.

9 (Entry for November 12, 1936, continued) Filed Nov. 12, 1936.

And further evidence is heard and concluded, and thereupon said defendants file motion for directed verdict, which motion is as follows:

10 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 6664) * *

MOTION TO DIRECT A VERDICT OF NOT GUILTY AT THE CONCLUSION OF ALL THE EVIDENCE.

The defendants, Ralph Raynor and Chett Fowler, each in his own behalf separately and severally moves the Court, at the conclusion of all the evidence in the case, to direct the jury to return a verdict of "Not Guilty" as to himself on each and every count in the Indictment upon the following grounds and for the following reasons:

I.

The evidence adduced does not prove nor tend to prove the allegations in count one of the Indictment, and fails to show that either defendant made any impression within the meaning and intendment or within the language of the statute. It further fails to show the making of any impression as described in said Count.

II.

The evidence adduced does not prove nor tend to prove the allegations in count two of the Indictment, and fails to show that either defendant had in his possession any paper as described in this count of the Indictment.

11 III.

There is a fatal variance between the proof, and the allegations contained in the first count of the Indictment.

IV.

There is a fatal variance between the proof, and the allegations contained in the second count of the Indictment.

V.

The undisputed evidence shows that the paper possessed by each of these defendants was of the kind and quality sold generally by stores to the trade and that these defendants and the public generally were entitled to possess this paper without authority of the Secretary of the Treasury.

VI.

And upon the further ground that upon all the evidence introduced the jury could not properly find a verdict of "Guilty" against him, the said Ralph Raynor, or against him the said Chett Fowler, upon any ground or for any reason.

George R. Jeffrey
Attorney for Defendants, Ralph Raynor, and Chett Fowler.

12 (Entry for November 12, 1936, continued)

And this cause is now continued until tomorrow morning, the jury being permitted to separate under admonition of the Court.

13 And afterwards to wit: at the November Term of said Court on the 13th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val. Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, alias Chess Fowler, each in his own proper

person, and by his attorney, and the jury heretofore impaneled and sworn also comes, and the trial of this cause is now resumed.

And the defendants' motion for directed verdict, is now submitted to the Court, and the Court being duly advised, orders that said motion for directed verdict be, and the same is, hereby sustained as to count one of the indictment, and overruled as to count two of the indictment, and said defendants except to the ruling on said motion as to count two of the indictment.

And the jury now returns into open court under instruction of the Court, its verdict as to count one of the indictment, which verdict is as follows:

"We, the jury, find the defendants, Ralph Raynor and Chett Fowler, not guilty as to count one. D. L. Wheeling, Foreman."

And the argument of counsel is heard and the jury is instructed by the Court, and retires under a sworn bailiff to consider of a verdict, and the jury now returns into open Court its verdict as to count two of the indictment, which verdict is as follows:

"We, the jury, find the defendants, Ralph Raynor and Chett Fowler, guitly, as charged in Count Two of the Indictment. John S. Griffin. Foreman."

It is thereupon ordered by the Court that the jury herein be, and the same is, hereby discharged, and this cause is continued until November 16, 1936, at 2:00 P. M.

14 And afterwards to wit: at the November Term of said Court on the 16th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, alias Chess Fowler, each in his own proper person, and by his attorney, and said defendants file motion for new trial, which motion is as follows:

Nov. 16, 36. 15 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

MOTION FOR A NEW TRIAL.

Come now the defendants, Ralph Raynor and Chett Fowler, each in his own behalf, and within the time allowed by law, and each separately and severally presents and submits to the Court his Motion for a new trial herein and prays the Court to set aside the verdict heretofore returned against him in this cause for the following reasons, to-wit:

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury is contrary to the evidence.

III.

That there was no sufficient competent evidence to support the verdict as to the defendants, or either of them.

16 IV.

The Court erred in not granting the separate and several motions of each of the defendants for a peremptory instruction to the jury to render a verdict of not Guilty at the close of the whole case.

V.

The Court erred in permitting the Government to introduce in evidence over the objections of each of the defendants, Government's exhibit number 3.

VI.

The Court erred in refusing to permit the witness Galligher to answer questions propounded on cross examination as to

whether there was any effort on the part of either of the defendants to counterfeit, or whether it was ever their intention to counterfeit, and in sustaining the objections of the Government to such questions asked upon cross examination.

VII.

The Court erred in refusing to permit either John O. Burton, a Government witness, or John Keller a witness for the defendants, to make a test of exhibit 3 by using an eraser in an effort to determine whether certain marks referred to could be removed.

VIII.

The Court erred in admitting irrelevant, incompetent, prejudicial and immaterial testimony offered by and on behalf of the Government, particularly with reference to the ex-
17 hibits offered in behalf of the Government at the trial of this case, wherein and whereby certain papers, containing so called impressions, vessels, and bottles containing some substance, wood press, glass, and other paraphernalia were admitted in evidence and exhibited to the jury over the objections and exceptions of each of these defendants at the time, and which were of such nature as to impress the jury with the belief that these defendants might have been counterfeiters, and were of such nature as to unduly prejudice the jury against the defendants to the extent that neither of them could have a fair trial or impartial verdict in so far as the jury was concerned.

IX.

That the Court erred in charging the jury as follows, "the law does not say the paper must be the same identical paper that has been adopted—it must be similar," to which portion of the Court's charge each of the defendants then and there objected and excepted.

X.

That the Court erred in charging the jury as follows, "the statute does not say that in order to be similar the paper must have threads in it—it might be similar and only have markings such as to lead one to believe it was paper that had

been adopted by the Secretary of the Treasury," to which portion of the Court's charge each of the defendants then and there objected and excepted.

18 Wherefore, for the above and other good, valid and sufficient reasons each of these defendants prays that the verdict of the jury be set aside and that each defendant be granted a new trial herein.

George R. Joppley
Attorney for Defendants, Ralph Raynor, and Chett Fowler.

Entered Nov. 16, 1936.

19 (Entry for November 16, 1936, continued)

And the Court being duly advised, orders that said motion for new trial be, and the same is, hereby overruled, to which ruling of the Court said defendants except.

And said attorney for the United States now moves the Court for sentence and judgment upon the verdict of guilty heretofore rendered herein.

It is therefore considered and adjudged by the Court that said defendants are guilty as charged in count two of the indictment.

It is further considered and adjudged by the Court that the defendant, Ralph Raynor, for the offense charged in count two of the indictment be committed into the custody of the Attorney General of the United States, or his authorized representative for imprisonment and confinement in an institution of the penitentiary type for a period of Four (4) years.

And it is further considered and adjudged by the Court that the defendant, Chett Fowler, alias Chess Fowler, for the offense charged in the indictment be committed into the custody of the Attorney General of the United States, or his authorized representative for imprisonment and confinement in an institution of the pentitentiary type for a period of two (2) years.

It is further ordered by the Court that said defendants be released under their present recognizance bonds until November 19, 1936, which bonds are considered in full force and effect until said defendants report, or until further order of this Court.

52 (Entry for December 28, 1936, continued) Entered Dec. 1936.

Upon defendants' motion for an order of Court to transmit certain original exhibits, which were introduced in evidence, to the Circuit Court of Appeals, the Court finds that it is impractical to include said exhibits in the transcript of the evidence in such form as to render them valuable as evidence as they appeared to the jury.

It is, therefore Ordered, by the Court that Government's Exhibit 3, and Defendants' Exhibits 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Seventh Circuit, at Chicago, as original evidence or exhibits in this cause as a portion of the record in this cause.

Come now the defendants, by their attorneys, and file joint bill of exceptions, which has been signed and approved by the Court and is as follows:

53 IN THE DISTRICT COURT OF THE UNITED STATES. Bill of exceptions filed Dec. 28, 1

* * (Caption—6664) * *

DEFENDANTS' JOINT BILL OF EXCEPTIONS.

Filed Dec. 28, 1936. Albert C. Sogemeier, Clerk.

Be it remembered, that at the trial of the above entitled cause, before the Honorable Robert C. Baltzell, and the Jury empaneled in said cause, the following proceedings were had, to-wit:

CLARENCE CONES, a witness called on behalf of the Government, being first duly sworn, testified as follows:

My name is Clarence Cones. I live West of Whiteland, in Johnson County, Indiana. I am twenty-nine (29), have a wife and two (2) children and have lived on a farm since year ago last July, living formerly in Indianapolis.

In 1931 I was convicted in this court of counterfeiting, received two con-current five (5) year sentences at Chillicothe, and was paroled after serving thirty-two (32) months and

six (6) days. I was never convicted of any other crime and had no illegal transactions in narcotics.

I know the defendant Chett Fowler. I made his acquaintance, right after I was paroled, at a kind of a hole in the wall beer tavern called Talbot Inn, in which I believe
54 he had an interest. That was in '35. I do not remember the conversation, but I next met Fowler on Kentucky Avenue about August of this year, at a repair shop of Overland Trucking Company, where he was working on a commission for getting business.

Fowler wanted to know if he could put some contraband or stolen cigarettes in a barn on my place. I told him it would be impossible as the barns might leak and I didn't want to have anything to do with anything of that nature. Fowler said he had a proposition that might help us both financially and I went back three or four times. He stalled apparently trying to contact another man and asked if I could come back again.

On the third trip he asked if I believed it was possible to reproduce counterfeit money by transferring the ink from a good bill to Government paper. I told him no. Until then the subject of counterfeit had not been mentioned between us. Fowler said it was possible, having seen it with his own eyes.

Fowler was transferred and I went to see him at his new address one morning the latter part of September of this year. He explained the proposition in more or less detail and asked if I could produce an amount or had enough money to invest in it. He explained that he had a man that could absolutely reproduce any United States bill so perfect that any one could take it to any bank in the United States and that they would swear that it was good, and take it and cash it. If I would get a person with as much as ten thousand dollars, he could get this man to reproduce that ten thousand and make twenty thousand dollars and I would get a ten per cent of the original ten thousand dollars. I told Fowler I pos-
sibly knew a man that might be interested in that sort
55 of scheme in Evansville. Fowler knew I had served time for counterfeiting. We went to Evansville that same day in a car which I presume was Fowler's, to contact the man who I said I thought would be interested in the proposition. He was Carl Smith. He runs a restaurant there and had served time in Chillicothe with me. We saw him at Evansville.

About an hour after I met Fowler at this new address I made an excuse that I was going to get dinner. I came downtown and reported the incident to the Secret Service. That was the first I discussed the matter with Secret Service officers. They had not sent me to try to make this connection.

At Evansville Fowler explained the proposition to Smith as he explained it to me: They had to have approximately ten thousand dollars worth of good money, and they would take the good money and take enough ink off of each side of one bill to print another bill with it, and that they could make twenty thousand dollars out of ten thousand dollars.

Fowler said they had access to Government paper and would produce the money on genuine Government paper. When we got to Evansville I left Fowler in his car and took a ride with Smith. I told Smith to fall in line with anything Fowler explained to him, and as soon as we got back to Indianapolis for him to telegraph me he couldn't come but that he would send another man, Tom Hollowell. Smith told Fowler he would come to Indianapolis the following week and Fowler and I returned to Indianapolis alone. We agreed to meet Saturday, and Fowler then stated he had contacted his man and would have him in Indianapolis the first part of the week. In the meantime I had reported the entire procedure to Mr. Gallagher of the Secret Service and I told him he could pass himself off as Tom Hollowell.

I showed Fowler a telegram from Smith and Fowler said Hollowell could act in Smith's capacity. Tuesday evening,
October 6th, Gallagher waited in the Union Station while
56 I went to meet Fowler. After a telephone call Fowler
left in his car and brought back the defendant Raynor. Raynor inquired about the past of Tom Hollowell. I told him he had served a sentence in Chillicothe. The three of us then went over the process of reproduction briefly and Raynor said I would see it all in the next day or two. I explained Hollowell was acting for Smith who supposedly was putting up the money. Mr. Raynor said he and two other persons had developed this system of swindling to a fine degree and that they couldn't be touched by the law. Raynor explained that he took impressions and made it seem as if he reproduced the bill, but that he took an absolutely perfect impression from a bill and that he would produce two bills of exactly the same type, the same plate number, check letter, number and everything identical, which he did.

Q. Now, state whether or not the defendant Raynor or

the defendant Fowler, either on or both, indicated to you, or said to you whether they were going to actually reproduce all ten thousand dollars—all of this ten thousand dollars worth of money that Hollowell was going to bring in for Carl Smith.

A. No, they had no intention to reproduce the ten thousand dollars.

Q. Did they tell you what they did intend to do?

A. Yes.

Q. That is, the defendant Fowler and the defendant Raynor told you what they intended to do if they got the ten thousand dollars?

A. They explained to me that they would take the supposed victim and show him to such an extent that would thoroughly convince him that they could reproduce a genuine bill and, then, when he was thoroughly convinced, he
57 would produce his ten thousand dollars and, through some sleight of hand performance, or otherwise, they would steal the ten thousand dollars and make away with it.

Raynor said he could force the operation and make the reproduction in an hour or an hour and one-half, but that wasn't the correct way to do it and it would take approximately twenty-four or a few more hours.

Fowler, Raynor and I left the garage and picked up Gallagher, who was known to the defendants as Tom Hollowell, at the Union Station. Raynor explained part of the proposition to Gallagher. We made an appointment to meet the next day, Wednesday. Raynor said Gallagher couldn't believe it if he told him about it, that he would have to show it to him to convince him. Raynor asked Gallagher if he could produce the ten thousand dollars. Gallagher said if the proposition was good enough he believed he could convince Smith to put up ten thousand dollars.

The next morning, Wednesday, Fowler came to my farm and gave me five one dollar bills, indicating which one Raynor would reproduce. Fowler said that when Raynor asked for some money to reproduce I was to take those out of my pocket and lay them on the table so that he could sort through them and pick out the one that he wanted. Four were old bills and Fowler said that Raynor would pick the other which was the newest one.

Gallagher and I then met and took the numbers of the bills and later Fowler, Gallagher and I met at the Union Station. Without making any inquiry at the desk or elsewhere, Fowler

took us to Room 607 Severin Hotel where we met Raynor, Raynor asked Gallagher if he thought he could produce ten thousand dollars, if he believed Raynor could reproduce the genuine bill. Gallagher said he was here to see what he could see. Raynor began setting up pans and bottles and all that equipment and after mixing a solution asked if either of us had a bill he could reproduce. Gallagher produced
58 a five and ten and I produced the five-one dollar bills the defendant Fowler had instructed me to use. Raynor looked at Gallagher's bills and said he would rather not use those bills. Raynor looked through my bills carefully and selected the bill Fowler had told me he would select. Raynor said it was against the law to have two bills of the same number, but that he had a list of all the American money that was in circulation in the old country and that when he reproduced the impression of this ten thousand dollars he could change those numbers to correspond with the money that was in foreign countries; therefore there wouldn't be any two bills in the United States with the same numbers.

Raynor took two sheets of white thin paper and coated one side of each piece of paper with a solution approximately the color of potassium permanganate, but it didn't leave a stain as potassium permanganate would and then he took the one-dollar bill that he had selected out of the five that I handed him, and soaked that in a solution. Then he very carefully took a few cubic centimeters of another liquid and produced an alcohol lamp and heated this fluid with an addition of some white powder in a test tube. He then added that to the solution that the bill was in. Then he took the bill and placed it between the two pieces of treated paper and rolled them very carefully around a little roller—very carefully and very tightly—and then took a long piece of glass, possibly sixteen or eighteen inches long, about three to four inches wide and possibly five-eighths of an inch thick, and rolled them, on the table, on a longer piece of glass, always rolling from him. He then took that, I believe, and stuck that in the solution. He then took the—unrolled them and he had a very good impression of each side.

59 Mr. Jeffrey: Just a minute. I object to a description of what he had.

The Court: Well, just answer the question without going into detail as to what he had—just what he did.

A. (continued) He took out, or took the one dollar bill from inside of the two pieces of paper. He then took the

two pieces of paper that had the impression of the bill on them.

Mr. Jeffrey: I object, your Honor.

The Court: Overruled. Go ahead.

A. (continued) He took the two pieces of paper that had the impression of the one dollar bill on them and laid them aside temporarily, and produced another piece of paper that he handed to myself and Mr. Gallagher to examine for the silk threads. Mr. Raynor had stated that this was official Government paper, and both of us examined this paper that was similar to Government paper.

Q. What size was it?

Mr. Jeffrey: Just a minute, please. Your Honor, I object to the—

The Court: Let that last go out.

Mr. Jeffrey: And I object to the answer given about the one dollar bill and move that it be stricken out for the reason that there isn't charged anything about a one dollar bill in this indictment.

The Court: He is telling what took place. You have got intent in this. It will be overruled as to that.

Mr. Jeffrey: May I have an exception, if your Honor please?

60 After we examined this piece of supposedly Government paper, Raynor took that piece of paper and put it between these two pieces with the impression on and went to the bureau and put a blotter on each side of it and, then, in so doing, I believe he transferred those two over and picked up another one dollar bill and put it into a magazine and gave it to Gallagher with the instruction to sit on it and not move around. He took the dollar bill from the magazine. In the meantime, the original bill that he was supposed to have duplicated, was lying on the table all the time. Fowler told Gallagher to mark that bill so that it could not be mixed with the duplicate and he tore a little piece off the corner. Then Mr. Raynor took the bill out, dried both bills and passed them to Gallagher and me for inspection. The dollar bill referred to is one Fowler brought to the farm. It was in the glass roller between the two pieces of paper, but the other bill was not. A switch was made on the bureau when the blotters were shuffled around. Raynor got that other dollar bill from that pile of blotters.

Q. Now, what became, then, of these two one dollar bills

that the defendant Raynor handed to you and Tom Gallagher to inspect?

Mr. Jeffrey: Your Honor, I object to the question for the reason that it doesn't matter, for the reason that they are not charged with destroying the bills.

The Court: Overruled.

Mr. Caughran: Answer the question.

A. Mr. Raynor tore up the original bill and handed Mr. Gallagher the supposed duplicate.

61 Q. In other words, you speak of the original as the one that he had brought to the farm, that morning?

A. Yes, sir.

Mr. Jeffrey: Now, your Honor, I move to strike out the answer for the reason that that might constitute an offense with which they are not charged in this indictment.

The Court: Well, let that last question go out.

Q. Now, what became of the other one dollar bill that you have spoken about?

A. I believe it was in the exhibits of the Government.

Q. Well, I don't mean that, but what became of it there at that time?

A. After it was destroyed, it was thrown in the toilet.

Q. No, the other one.

Mr. Jeffrey: I object to that.

Q. (continued) Well, the one about which you have spoken—the other one that you were examining.

A. The other one, I believe, was given to Mr. Gallagher.

Q. At that time?

A. At that time.

Arrangement was made for me to meet with the other three men the next afternoon, but I did not. Fowler came to my farm the next morning, and told me it wouldn't be necessary for me to show up. I came back that evening (Thursday) and met Gallagher, Fowler, and Raynor in Raynor's room number 1015 Severin Hotel, as Fowler told me Raynor was nervous and wanted to see me.

62 *Cross-Examination by Mr. Jeffrey.*

My first contact with Fowler in 1935 was more or less of a chance meeting. I had some conversations with him about narcotics along about that time, and on various occasions made indirect efforts to find out from him where I could get

narcotics. He was reported to have taken an ounce of morphine to a drug store to have it checked and the report became circulated that he was handling illegal narcotics. To the best of my knowledge it was morphine. I reported this to the narcotic agent. I never tried to make a buy from Fowler. I farm two hundred and forty acres owned by my dad. After my return from the reformatory I worked on the farm for a living. During that time I have acted more or less as an informer for the Narcotics Service or some branch of the Government. I never received a salary but I got compensation for each case. They are not obligated to pay me anything and I don't recall exactly how much they have paid me.

I have never talked to Fowler pertaining to counterfeit money. I do not know how to make counterfeit money. I financed the case in which I was convicted. I was contracting at that time. I never at any time had any intention to become a party to a counterfeiting scheme and I don't know about Fowler.

The first time that I knew that this was not a true counterfeiting scheme was the first night I met Raynor. That was the first time I knew that it was a swindle instead of a counterfeiting scheme.

Q. Now, what was your purpose in taking Fowler to Evansville, to contact Smith?

A. To produce a man that they would operate in front of.

63 Q. "Why did you go clear to Evansville to do it? Couldn't you find someone here in Indianapolis?"

A. Not that Mr. Fowler possibly didn't know.

Q. How is that?

A. I wanted to get somebody that Mr. Fowler didn't know.

I had already given this information to the Secret Service. They didn't know why I was going to Evansville, other than just to produce a supposed victim. I worked that out in my mind. I was not informed that I would receive compensation from the Government. I have received money from this department of the Government, acting as an informer.

Q. Before Gallagher came into this plan, here, you did know that there would be no intention to counterfeit money, didn't you?

A. I did not.

Q. When did you first learn that there would be no money counterfeited?

Mr. Caughran: If the Court please, I object to the question.

The Court: I don't understand they are charged with that. They are charged with having in possession this paper to make an impression.

Mr. Caughran: That is all.

Mr. Jeffrey: Well, I take it, your Honor, that the ultimate intent of the statute is to prevent counterfeiting.

The Court: Oh, yes, but they might have this paper and sell it to somebody else, never intending to counterfeit at all, and yet it would be an offense under this statute, wouldn't it? It charges the possession of the paper in the second count. That is the offense charged.

64 Q. Did you ever see any distinctive Government paper in the possession of either of these defendants?

A. I saw a paper that was very similar to Government paper.

Q. That is the paper that was seized, is it?

A. Well, I presume so.

The paper seized is not all the paper I ever saw in their possession. I never saw the book of money that was supposed to be in foreign countries. The plan as I see it was to convince the man that they could perfectly reproduce a good bill, and when the intended victim produced his money, they would run away with it.

Redirect Examination by Mr. Caughran.

The only other occasion on which I was paid for information furnished the Treasury Department and the Secret Service was in a case at Columbus, Ohio.

THOMAS A. GALLAGHER, a witness called in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Pfister.

My name is Thomas A. Gallagher, I live at Indianapolis. I have been an operative of the United States Secret Service for four and three-quarter years. My post of duty is

Indianapolis. I have known Clarence Cones about three years. He was previously convicted in this court for violating counterfeit laws. My first meeting with him in con-
65 nection with this case was in the Secret Service office Monday night, October 5th at seven-thirty, and he discussed with me an arrangement whereby I would be introduced, the following day, to these defendants, to be shown their operations.

About nine P. M. Tuesday, October 6, 1936 I was conducted into their presence by Cones. Fowler was in the back seat of a car and Raynor in the front seat. Raynor said he did not like to deal with a man he had not previously known about, and I said he would either deal with me or not, as he saw fit. Raynor said he would give a demonstration to Mr. Cones and me the following day, and he would arrange a room and Fowler would conduct us to where the demonstration would be made.

The following day, Wednesday, October 7th, Cones and I met Fowler about one-thirty P. M. and he conducted us to Raynor's room at 607 Severin Hotel, where we met Raynor. Fowler led us to the room without inquiry at the hotel desk. Raynor stated that he and two associates, neither of whom was in this country, had developed a method by which genuine currency of the United States could be exactly duplicated, so exactly that banks or the Government could not distinguish between the original and the duplicate that the proper and regular method required a twenty-four hour period of treatment but that, on this day, he would use what he termed a forced method to complete the entire operation within a short period so that we might see the whole thing at one sitting. He stated that the operation required would not be successful without the use of genuine Government paper, which he and his associates had; that they had genuine Government paper to the amount of about five thousand sheets and, when these were used, no more could be obtained by him, at least; that, by the method he employed, a genuine bill could be used only once and that, when it had been reproduced, or been used
66 to reproduce one additional note, both the original and the reproduction would then be fully passable but that neither of those could again be used in reproducing further duplicates, wherefore it was necessary that a considerable amount of money be produced because each bill would be used only once; that it was desirable that a great deal of it be

done at one time because the chemicals were scarce and that, after they had been mixed, they became worthless in a period of a few hours if not used immediately that, therefore, he would show us, today, what he was capable of doing, and that further discussion would occur later as to just exactly what would occur when the mass production—I believe that is my own term—whatever words he used were intended to convey the same meaning—took place a few days later on. He stated that, on this particular day, he would do something that he had done only a few times before, and it was extremely dangerous; that he would produce a duplicate which was identical in all respects with the original. He explained that this was a dangerous thing because, if he should be caught or if any person should be caught with two such identical bills in his possession, he would then be liable to prosecution by the Government. He added, at that point or possibly at a later point during this same conversation, indicating Mr. Cones and myself, that, "If you two men," he said, "happen to be Government men, I would be sunk for doing this—for reproducing one bill identical in duplicate."

At that point, he mixed certain fluids, from bottles that were on the dresser, into two or more metal pans.

I have examined these articles on our table numbered Government's Exhibit 7 to 27, inclusive. These exhibits were found in a different room of the hotel, two days later, to 67 which Mr. Raynor had removed in the meantime. As far as I can tell they are the same equipment I saw in room 607, but I can not state positively.

Continuing his operations, after placing the chemicals and fluids—color fluids—in two or more of the pans, he asked for genuine money to be reproduced. I had prepared myself with a five and a ten dollar bill, new bills obtained from a bank, and they were examined by Mr. Raynor and set aside. He said that he would explain later why he chose not to use a five or ten dollar bill.

Mr. Cones produced five one dollar bills, which he had shown me previously and about which we had had some discussion and the numbers of which I had recorded on an envelope, and Mr. Raynor selected one of these bills, which was new and not worn. The other four had been in circulation apparently and had become soiled.

I do not know what happened to any of the four bills. The one used in the experiment was ultimately destroyed by Raynor in my presence over my vigorous protest.

Raynor produced two sheets of white paper, somewhat larger than the currency, and took from a leather kit, containing six bottles, one which contained a brownish fluid. It had the odor of a coal tar product. He placed a considerable amount of this brown fluid on a piece of medicated cotton, or cotton, and coated one side of each of the two sheets of white paper. He had, in the meantime, immersed the genuine one dollar bill, supplied by Mr. Cones, into one or more of these pans and had treated it by what appeared to be chemical processes. He then placed this genuine bill, which was wet, between the two coated, treated surfaces of the two white
68 sheets of paper. The genuine bill, covered by the two white sheets, was then rolled tightly and firmly on a small rubber roller with a steel center and this roller placed on a glass sheet. By applying considerable pressure, then, with another piece of glass, about three inches wide and about sixteen inches long and about half-inch or more thick, Mr. Raynor rolled this rubber roller, about which the genuine bill and the two treated papers were wrapped, six or more times across the lower sheets, applying considerable pressure. He then removed it and immersed it in one of the pans of fluid.

At that point, he stepped across the room to a dresser, on which was a considerable pile of blank white blotters, the usual office size blotters, and he placed the two sheets of paper, between which was the genuine one dollar bill, all of which had been rolled and immersed in the fluid, between these blotters. Before he did that—no—he dried them slightly, at that point, with the blotters and then removed the two sheets from the genuine dollar bill, calling our attention to the fact that they—what he said was, "Observe that they now have an impression in reverse, which has been taken off the genuine one dollar bill. Now," he said, "I have taken off, perhaps, more ink in this case than I should. As a matter of fact, I can perform this operation without taking off even a visible amount of ink, but I have had to hurry, here, and force it more, force it more vigorously than I desired, simply because we are trying to do this in one day to demonstrate it to you, but," he said, "this impression, that has now been taken on these two sheets in reverse, will then be transferred on to genuine Government paper." And he produced this sheet of paper, cut to the size of the genuine currency, and stated that it was genuine Government paper, and invited our inspection.
69 Mr. Cones and I both examined it, under a light. When I held it up to look at it, I had the light right through it.

He said, "That isn't the way. Let the light reflect off of it, and then you will then see the red and blue lines which are a distinguishing feature of genuine Government paper." And I did look and saw these red and blue lines on the surface of the paper.

Mr. Raynor then placed this paper between the two sheets containing the reverse impressions of the front and back of the one dollar bill, placed them together, went over to the dresser where the stack of blotters stood, and placed what he had in his hand between two of the blotters. He then began throwing blotters pretty freely around the dresser, a couple here, a couple there and a couple here (indicating), and then, presently, he picked up two or four of them and brought them back and said, "All right." Now, you will have to sit on this a while to put pressure to it." I couldn't see just which particular blotters he picked up, but I could see that it wasn't the two blotters between which he had put the genuine bill and the two impression sheets because I followed them as closely as I could with my eye. So he placed these two blotters, with whatever might be between them, inside of a magazine and had me sit on it for about fifteen minutes while we talked about what later would be done in the furtherance of our plan. After about fifteen minutes, he had me get off the magazine and took out what was in it and immersed that—that was two white sheets with something inside—immersed that in fluid, skinned the paper back a small amount, once or twice, and said, "It is coming along fine," dipped it into the fluids again and presently pulled the two pages—papers which proved to be plain, I should say, papers
70 off, and, in the center, was what appeared to be a genuine—

Mr. Jeffrey: Now, I am objecting to what it appeared to be, there.

A. (continued) —well, what was genuine one dollar bill which, however, he told me he had just made by transferring the reverse impressions, which he had made, on to a blank sheet of genuine Government paper. He invited, at that time, a comparison between the original bill, which had been used in taking the impression and which I had torn at one corner with the assistance of Mr. Fowler, at his suggestion, to identify it—to compare this original genuine one dollar bill with the second one dollar bill, which Mr. Raynor said had been made by him by duplicating the other. I did compare them

and found that they did have the same serial numbering, the same check letter, the same face plate and back plate numbers, the reproductions of the same signatures of the Treasury officials, and were of the same series and were both silver certificates.

Mr. Jeffrey: Now, your Honor, I move to strike out all the testimony about the two one dollar bills, that not being included in the indictment and being, if anything—

The Court: Overruled.

Mr. Jeffrey: May I have an exception?

The one dollar bill used by the defendant Raynor was a one dollar silver certificate serial no. F 22820330 A series of 1934, Check Letter and Face Plate no. B 46, Back Plate no. 2915.

Government's Exhibit 6 is a genuine one dollar silver certificate, serial no. F 22820330 A series of 1934, Check let-
71 ter and Face Plate no. B 46, Back Plate no. 2915, series of 1934. There are the signatures of W. A. Julian, or reproduction of the signatures of W. A. Julian and Henry Morgenthaw, Jr. This was handed me by Raynor on the completion of his demonstration, October seventh. He invited me to go out and display it to the cashier of any bank or to any other authority on money and tell them, if I chose, that I thought it was not good and asked them their opinion on it, he assured me that all would tell me that it was a genuine bill.

I have had experience in handling currency and bills of the United States and have had training along that line. The United States never issues two bills of identical numbers bearing the same Check Letter, Plate numbers and Serial numbers.

I asked Mr. Raynor, at that point, what we were leading up to, exactly, specifically what the proposition was to be, and he said, "Why, you haven't seen anything yet. Now, if you can come back tomorrow, I will show you how to reproduce genuine money—duplicate it—and, in the same operation, change the numbers or some of the numbers."

He explained that it was not safe to have two bills in circulation in the same section or in the same country, which had identical numbers, wherefore it behooved him to produce bills only with numbers which would not be found duplicated in the United States. He explained, as has previously been testified to here, that he had a list of United States currency numbers

and so forth of such currencies, which money was in Europe, and, in that manner, by using those numbers in his reproduction, he could avoid likelihood of two bills of the same number showing up in the same place.

He then said to come back, both of us, at one-thirty I think, the next day, but that he might change hotel rooms in the
72 meantime, and we should, therefore, not come to the hotel room, but should meet Mr. Fowler downstairs, who would conduct us to wherever he might then be.

Fowler was present during the entire occurrence in the hotel room. I left the hotel room with Cones and Fowler, separated from Fowler down stairs, and met Fowler at one-thirty the next day. He stated Raynor changed hotel rooms, and without inquiry as to where Mr. Raynor would now be found conducted me to room 1015 in the same Severin Hotel, where we met Raynor and he again set up a lot of equipment which was afterward used in his demonstration.

On this day October 8, Mr. Raynor said he would do the first steps in producing currencies with different numbers than the original, and he asked me for some bills—a bill to be used for that purpose, and I again offered him the ten and twenty dollar bills—the five and ten dollar bills which I had produced the day before, and he objected to them for some reason that was not clear to me, and Mr. Fowler offered a twenty dollar bill from his billfold or from his pocket at any rate. Mr. Raynor accepted that.

Raynor mixed up some chemicals or some fluids in two or three of these pans and added a mixture of white powder and liquid, which he had heated over an alcohol lamp, and immersed this twenty dollar bill in several of those pans for varying periods. He forgot to use three of the pans, the first time, and, then, when I looked at them out of the corner of my eye, he went back and dipped it. He placed this bill between two sheets of blank white paper, which had not been treated in any manner, and then produced—the twenty dollar Federal Reserve note. He placed this twenty dollar bill, which was between the two sheets of blank paper, inside a sort of press, made of two boards with screws and thumb
73 screws on them and—

Government's Exhibit number 4 is an obligation of the United States, to-wit: a Federal Reserve twenty dollar note, drawn on the Federal Reserve Bank of Chicago, Illinois, Serial No. G21885595A, Series of 1928B, Check Letter and Face

Plate No. G33, Back Plate No. 34, reproductions of the signatures of W. O. Woods and A. W. Mellon.

I first saw that Exhibit on October eighth, in the defendant Raynor's room, in the Severin Hotel, when it was produced, there, by the defendant Fowler, at the request of the defendant Raynor for a genuine twenty dollar bill to be duplicated.

This bill was immersed in various fluids by Mr. Raynor and placed between two sheets of blank white paper, all of which was then placed inside of a wood press. The press was tightened up on the bill and Mr. Raynor said that it would be necessary for these chemicals, in which the bill had been immersed, to work on it for twenty-four hours, and he asked who was able to keep the bill in a safe place during that time. I said I was, and he showed me how to hold it up very carefully on one edge so that the chemicals would not run the wrong way and damage the bill; and I held it very carefully in that position until I left the hotel.

Government's Exhibit No. 13 is the wood press in which Raynor pressed the genuine twenty bill which is Government's Exhibit 4, and they were both delivered into my custody on October 8th by Raynor and remained there until between one-thirty and two o'clock the next day. I had them at all times until I met the defendants the next day.

Mr. Pfister: The Government now offers in evidence GOVERNMENT'S EXHIBITS NOS. 4 and 13, respectively.

74 Mr. Jeffrey: To which the defendants object, your Honor, for the reason that the Government Exhibit 4 purports to be a twenty dollar Federal Reserve note, which is not described or in any way referred to in the indictment, and Government's Exhibit 13 purports to be a wood press, which is not referred to nor in any way described in the indictment.

The Court: I will withhold ruling at this time.

I was in the hotel room with the two defendants about forty-five minutes on that occasion. Raynor instructed me to meet with Mr. Fowler in the lower part of the hotel, at one-thirty the following day with Exhibits 4 and 13 at which time he would complete the process.

Raynor said that he did not like the idea of Cones failing to show up that day, and he told the defendant Fowler to go down and see Cones and have him up there, between eight and nine o'clock, at Raynor's hotel room, the same night, which was October 8th, so we could understand where we all stood. He told me, also, to be there at that time, and I was.

We had only about a ten-minute talk. We met Fowler downstairs on the mezzanine floor.

Cones and I met Fowler and Cones said he hadn't been there because of illness in his family.

Raynor commented, during that conversation on the fact that Mr. Cones had served a term in a Federal institution and was probably known to the local authorities and that possibly it would be better if he pulled out of the thing at this point and not be seen with Mr. Fowler or myself on the street, because it might arouse the suspicions of the police, and it was, thereupon, agreed that Cones would not return the following day. Mr. Raynor told him he need not come back.

75 We separated, and I next met Fowler down stairs in the Severin hotel at one-thirty P. M. Friday, October 9th, having with me, at the time, the Exhibits 4 and 13 as instructed by Raynor. Fowler conducted me to Room 1015.

I delivered the press, Exhibit 13, containing within it the genuine twenty dollar bill, Exhibit 4, to Mr. Raynor, who again set up apparatus and filled several containers with various fluids and immersed the genuine twenty dollar bill in two or more of these pans. Mr. Raynor then, as on October 7th, took two sheets of plain white paper, somewhat larger than a genuine United States bill, and produced a bottle containing a brownish fluid, as he had on the previous occasion, and coated one side of each of these two sheets of paper with the brown fluid. He placed this genuine twenty dollar bill, which is Exhibit 4, between the treated surfaces of the two sheets of paper, rolled the whole carefully on a rubber roller with a steel center, placed this on a glass sheet and took another glass sheet, the same ones, I believe, as on the previous occasion, and applied heavy pressure and rolled the roller, with the papers and the genuine bill on it, repeatedly, under pressure, across the glass sheet. Presently, he unwound these papers and genuine bill from the roller, took off the two outside sheets and exhibited them to me, calling my attention to the fact that they bore reverse impression.

Mr. Jeffrey: Now wait. Your Honor, I object—

The Court: What did he say?

The Witness: He said, "You will notice that the impression has been transferred onto these white papers. Now," he said, "maybe I have made it heavier than I should

76 have because I don't need to take off any visible impression in order to make this transfer, but I have done it and—

Mr. Jeffrey: Now, your Honor, I object to statements about an impression, because it was an impression of Exhibit 4, which is not—

The Court: Is that the one you are talking about now?

Mr. Jeffrey: That is the note that is not referred to in the indictment, and I object to it and move that all of this testimony go out.

The Court: Overruled.

Mr. Jeffrey: May I have an exception, please?

Q. Mr. Gallagher, at that point,—

The Court: As I understand, this was the last day you were up there? Is that right?

The Witness: It was.

Government's Exhibits Nos. 1 and 2 are the reverse impressions of the face and back of a twenty dollar note on the Federal Reserve Bank of Chicago, which were made in my presence and in the presence of the defendant Fowler, from Exhibit 4, by the defendant Raynor on October 9th at Indianapolis.

Mr. Pfister: The Government offers in evidence GOVERNMENT'S EXHIBITS NOS. 1 and 2, respectively.

Mr. Jeffrey: To which, your Honor, the defendants each object for the reason that they purport to be so-called impressions made from Government's Exhibit No. 4, which is not a Federal Reserve Note described in the indictment. The witness has described Exhibit No. 4 as Serial No. G21885595A, and that is not the Federal Reserve note described in the indictment.

77 The Court: I will hold up the ruling on this, at this time. As I understand, those are the impressions of the note that is described in the first count of the indictment. Is that right?

The Witness: I don't know the number of the—

Mr. Pfister: Yes, sir, it is, your Honor.

The Court: I understood you to say, a moment ago, that that twenty dollar bill, Exhibit No. 4, wasn't the one.

Mr. Pfister: Mr. Jeffrey is contending that.

The Court: I don't know anything about it.

Mr. Pfister: It is our position that it is.

Mr. Jeffrey: I just want to call the attention of the Court to the fact that the indictment says that the serial number is superimposed, and fails to give the serial number.

The Court: Well, it doesn't give the serial number because it says it was obscured by superimposed paper strips.

Mr. Jeffrey: Yes, sir.

The Court: Do you have anything to say about that with reference to these impressions that were testified about a while ago?

Mr. Pfister: We were just coming to that.

The Court: I understand that you say this is the same note.

Mr. Pfister: It is.

Q. Now, Mr. Gallagher, what is the fact as to any numbers or identification marks on Government's Exhibit No. 4 having been obscured in any manner by one or both of the defendants?

The Court: That was at the time that the note was placed in the press?

Mr. Pfister: Prior.

The Court: Prior to that time.

78 Q. (Continued.) That is, prior to the delivery of Government's Exhibit No. 13, containing Government's Exhibit No. 4, to you on October 8, 1936?

A. That numbering on the bill was visible at that time.

I made memoranda of the numberings that were on the bill at the time I brought it to the office. The numbers on Exhibit 4 were not obscured. After the impressions had been taken and dried, Mr. Raynor produced a little packet—I think it was one that had originally contained razor blades—and produced from it three very tiny strips, which he pasted over the reverse serial numbering in two places and over the check letter and over the face plate number on the impression he had taken of the face side of the genuine twenty dollar bill. He pasted them not on the genuine bill, however, but on the reverse impression.

He didn't make this impression until the last day. The first day the bill was just being treated chemically he said. Exhibits 1 and 2 were not in the vise the night I took it to the office. He had two other papers in it of the same kind, but he took them out and used new papers. Exhibits 1 and 2 is the new paper he used after I returned with Exhibit 4, the twenty dollar bill, and the vise. The strips were placed on Exhibit 1 by Raynor in room 1015 of the Severin Hotel, which is in Indianapolis, Marion County, Indiana, and that is the place where these actions were performed.

Mr. Raynor then produced a sheet, which he stated was another sheet of genuine Government paper, permitted me to examine it, and I did examine it, and he then placed it be-

tween two sheets, Exhibits 1 and 2, which contained the reverse impressions of the twenty dollar Federal Reserve note,
and he went to the dresser, where he again had a large
79 pile of blotters, placed what he had in his hands between
two of these blotters and again threw blotters pretty liberally around the dresser in a manner which made it difficult to follow; that is to say, I didn't know which particular blotters were the ones that he had picked up and between which he had placed Exhibits 1 and 2. At that point he pick—

Q. I hand you a paper which has been marked Government's Exhibit No. 3, and ask you to state to the Court and jury what that is.

A. This is a paper cut to the size of the genuine United States Currency and it bears on both sides,—

Mr. Jeffrey: Now, your Honor, I object to a fuller description of this exhibit. I think all he has to do is identify it, and the exhibit can speak for itself as to what it is.

The Court: What was it you were going to say?

The Witness: It bears the markings—

Mr. Jeffrey: I object to that.

The Court: All right.

Q. Where did you first see that piece of paper marked Government's Exhibit No. 3, if at all, Mr. Gallagher?

A. I saw a piece of paper, which was of the same kind and appeared to have been the same, in Mr. Raynor's hands at the time he placed the reverse impressions on either side. I later recovered two blotters, having been continuously in the room, with the two papers, containing the reverse impressions of a twenty dollar note, and, with this sheet,—

Mr. Jeffrey: I object, your Honor, to the testimony about what they contained. Let them speak for themselves,—these
exhibits.

80 The Court: Go ahead.

A. (Continued)—with this sheet between them, and I found no others of the same kind in the room. Because I didn't see it continuously, I can't say whether it was the same sheet, but I couldn't find any other.

Q. Now, let's see. Do I understand, Mr. Gallagher, that Exhibit No. 3 was placed between Government's Exhibits Nos. 1 and 2?

A. It was.

Q. By the defendant Raynor?

A. It was.

Q. Whether or not the Government's Exhibit marked 3 is the identical piece of paper which was later seized by you, in the possession of the defendant Raynor or both of the defendants.

A. It was.

Q. Mr. Gallagher,—

The Court: Let me ask you about that Exhibit No. 1. Were those little strips pasted on there after the impression, as you refer to it, was made?

The Witness: They were. It was pulled off the genuine bill, to which it had been adhering, and then those strips were placed over it.

Q. I believe you stated, Mr. Gallagher, that you had had experience, in your work, with the contents of the paper used and the type of paper used by the United States in the making of Government obligations and securities. Is that true?

A. I have had some training in that regard.

81 Q. Yes. Basing your answer upon your experience as an officer in the Secret Service Department and the Training that you have had in connection with your office, state whether or not the paper, which you now hold in your hand, marked Government's Exhibit No. 3, is similar paper to that adapted for the use of making of Government obligations and securities of the United States.

A. I would say yes.

Q. Whether or not that paper, so marked, is similar to that paper adopted by the Secretary of the Treasury of the United States for the making of Government obligations and securities of the United States.

A. I would say that it is similar.

Q. And you may just state in what manner, Mr. Gallagher, it is similar.

A. It is, first of all, of the size of the genuine currency. It is a bond paper. The paper used by the Government is of a bond type. The feel and the crackle of it, which are distinguishing features, are similar, and it has in or on the surface curls of red and blue—

Mr. Jeffrey: Now, wait just a minute.

Your Honor, I believe I will object, at this time, for the reason that this exhibit is not in evidence yet and it has not been offered in evidence, and I object to it and to any further descriptions of the exhibit at this time.

The Court: Overruled.

Mr. Jeffrey: May I have an exception?

The Court: He is explaining in what manner this exhibit is similar to the genuine Government paper.

82 Mr. Jeffery: I understand that, but the exhibit is not in evidence.

The Court: Well, it has not been offered, but he has a right to explain the similarity.

Mr. Jeffrey: May I have an exception?

The Court: Yes. Go ahead with your answer.

A. (Continued.) The paper has in or on the surface red and blue curls which resemble the distinctive red and blue silk fibers which are impregnated into genuine currency paper.

After Mr. Raynor had placed between two or more blotters the reverse impressions, which he had made, with a sheet of what he described as genuine Government paper between them, he shuffled the blotters around a bit and presently came back with two or more blotters in his hand, between which was some paper—I couldn't see what it was—and he said, "Now you will have to sit on this like you did the other day until the impression is transferred." And, at that point, I gave a prearranged signal by lifting the telephone receiver and—listened to hear the officers at the door. There were two city detectives, Detective Sergeant John Gaughan and Detective Francis Logue, in the next room, and they received the message, which was relayed to them from the hotel switchboard, that it was time to come in. The defendant Raynor told me to sit down on the magazine, two or three times, but I wanted to be near the pile of blotters, where I could readily seize them, and so I fiddled around therefor a fraction of a minute until I heard the doorknob turn. The door was locked and the officers were not able to enter. As soon as I heard it, I picked up a pile of blotters, and Mr. Raynor was surprised and reached for them also, and I produced my badge in my other hand and said, "I am a Federal officer and

83 you are under arrest," and for them to get over against the wall, there. Mr. Raynor withdrew—he released his grip on the blotters, at that time, and the defendant Fowler came forward and said to me, "Tom—come on, now, Tom," and made a number of remarks which were just exclamations, really, and put his hands on my chest and shoulders and pushed me a bit. He also reached for the blotters, which I had in my left hand, and began to tear them up. He did tear, perhaps, a dozen or more, I believe, there, and I tried to push them away and I had my gun. I said, "Get back or I will

shoot," and he continued to talk to me and he took hold of one arm and pushed me around a little. He didn't strike me; he held on and pushed, and I said, again, "I will shoot if you don't get back," and he stood there and I reached the gun over his shoulder and fired once into the wall of the hotel room. At that time, either I pushed him away or he let go and it brought him nearer the door and I told him, then, to open the door, which he did. In the meantime, Mr. Raynor had moved back and forth around the room. He bumped into me, but he didn't strike me. I think it was only the narrow quarters that caused him to come in contact with me. He made a move toward the door and then away from it and back and forth, and, on the arrival of the officers, who were accompanied by Operative George B. Loy of the Secret Service, we took custody of the two men and custody of the paraphernalia. At that time, I picked up the magazine, which Mr. Raynor had told me to sit on, and, on opening it, found between the pages two blank sheets of white paper, similar to the original appearance of the ones on which the reverse impression had been made, and, between, found a genuine twenty dollar Federal Reserve note, on the Chicago Federal Reserve Bank, over which there were strips pasted; that is, on which the serial numbering, in two places, the check letter and the
84 face plate number had been obscured—covered by small strips, similar to those which had been previously pasted, in my presence, on the reverse impressions of the bill.

Government's Exhibit No. 5 is the genuine twenty dollar bill with strips pasted over the serial numbering and the check letter and the plate number, which I picked out of the magazine. Over the face and back of it were blank sheets of white paper similar to those used by Raynor in taking the reverse impressions of the other genuine twenty dollar bill which is Exhibit 4. Raynor and Fowler were placed under arrest at that time for violating the currency laws of the United States.

I have examined Exhibits numbered 7 to 27.

They were found in the possession of the defendants in room 1015 in the Severin Hotel in the city of Indianapolis, Marion County, Indiana on October 9, 1936. Raynor acknowledged ownership of the hand bag and brief case which contains some of these articles, and any of the things which were around his hotel rooms.

(The Government offers in evidence EXHIBITS NUMBERS 7 to 27 inclusive, which were on a table.

The Government also offers in evidence EXHIBITS NUM-

BERED 1 to 6 inclusive. Number three is the blank sheet of paper. Number 6 is the one dollar certificate. The Court sustains the objection as to number 6.)

Mr. Jeffrey: No. 1 is the reverse impression, they call it? Is that right?

The Court: It is the impression, yes, of the face of the bill, on which the numbers—which shows strips over the numbers. No. 2 is the other side of the bill. Now, that is the twenty dollar bill that you are speaking of. No. 3 is the blank paper, which he testified being similar to that adopted by the Government. No. 4 is the twenty dollar bill, as I
85 understand, which was in the vise or in the press on the night that you had it in your possession, Mr. Witness. Is that right?

The Witness: That is right, and was later used to make the reproduction.

The Court: No. 5 is two sheets of paper between which another twenty dollar bill was placed, with the strips pasted over the numbers.

I would like to ask about Exhibit No. 5, Mr. Witness, just a minute.

Did you examine the two pieces of white paper, between which the twenty dollar bill was placed, to ascertain whether or not those strips were made of paper similar to that which has been adopted by the Treasury?

The Witness: They are not.

The Court: They are not?

The Witness: The paper is thinner, it has no lines on it and it isn't the same size. I would not consider it as distinctive.

The Court: Well, I don't know whether you testified to this or not: that the United States Government has, or the Treasury Department has, adopted a certain distinctive paper for the purpose of printing the Government's obligations?

The Witness: The Treasury of the United States, yes, sir —the Secretary of the Treasury of the Treasury had adopted it.

The Court: You are familiar with that.

I think Exhibit No. 5 should not be admitted. That would be of absolutely no value because the paper, there, is not the kind that is used, and it is another twenty dollar bill. It might be just corroborative of the statement with reference to these strips being pasted over the numbers. It isn't neces-

sary because you have the Exhibit No. 1, which con-
86 tains the numbers he speaks of and also contains the strips. That is No. 5.

I think Exhibits Nos. 1, 2, 3 and 4 are competent.

Mr. Jeffrey: Then the defendants, and each of them, wish to object to the introduction in evidence of Government's Exhibit 1 for the reason that it is not the impression referred to in the indictment. The witness has stated that it is the impression of a bill, Exhibit No. 4, which has the serial numbers upon its face, while the indictment states that this so-called impression was taken from a twenty dollar bill which had paper strips superimposed over its serial number.

The Court: That is the one with the serial number on the impression after the impression was taken.

Mr. Jeffrey: Well, it may be according to how you read the indictment.

The Court: That is what the exhibit shows; that the strips are on the impression and not on the exhibit itself.

Mr. Jeffrey: The exhibit shows they are on the impression, and the defendants contend that the indictment reads that the strips were superimposed upon the face of the bill.

The defendants object to the introduction in evidence of Government's Exhibit 2 for the reason that it is not the impression referred to in the first count of the indictment and that it, according to the testimony of the witness, was taken from Government's Exhibit 4, which is a Federal note with its serial numbers visible, while the indictment states that the impressions were made from a bill whose serial number was superimposed with a paper strip.

The defendants object to the introduction in evidence of both Exhibit 1 and Exhibit 2 for the reason that they are not impressions and that, at the most, they are transfers and
are not such articles as are described in the first count
87 of the indictment, and are not within the intendment of the statute or within the language of the indictment, said impressions being in the reverse, and that not being made unlawful by the statute.

The Court: I don't know how you could take any better impression of a bill. Of course, perhaps it is just surplusage in there. I don't know what it means. Where you take an impression of any object, it would be, of course, in the reverse. The impression part of it would be just the reverse, so far as the notes are concerned. I don't think that means anything.

Mr. Jeffrey: As to the introduction in evidence of Government's Exhibit 3, I made my objection a while ago on the theory that that was not within the wording of the statute, and they have now identified that as similar paper haven't they?

The Court: You don't have any objection to that No. 3? The testimony of this witness is that it is similar.

Mr. Jeffrey: But the defendants object to the introduction in evidence of the Government's Exhibit 3 for the reason that the witness did not testify, and it has not been shown in evidence that this paper was adapted to the making of Government obligations, nor that it was suitable for the making of Government obligations.

The Court: Well, let's see about that. "After a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States any similar paper adapted to the making of any such obligation or other security,"—what do you say about that, Mr. Witness?

The Witness: I would say that this paper is adapted to the making of Government obligations.

The Court: Any objection?

Mr. Pfister: I thought he had already said that?

The Court: Well, if he didn't, he has said it now.

88 I guess that about takes your objection out.

Mr. Jeffrey: I expect it would, your Honor, yes. If he testifies that it is adapted, I expect that takes out the objection. However, I would like to object, for the purpose of the record, to the introduction in evidence of Government's Exhibit No. 3 for the reason that it is not a paper resembling a distinctive paper of the United States, nor adapted to the making of Government obligations, and has not so been identified by any expert other than that the Secret Service Agent on the stand.

The Court: That is for the purpose of saving the record?

Mr. Jeffrey: Yes.

The Court: It will be overruled.

Mr. Jeffrey: The defendants object, your Honor, to the introduction in evidence of Government's Exhibit 4 for the reason that it purports to be Federal Reserve note, Serial No. G21885595A, and it is not the Federal Reserve note referred to in the first count of the indictment, and these defendants are not charged, in this Court, in this case, with having made any impressions of Exhibit 4, or with having

done anything in connection with Exhibit 4, in contravention of the laws of the United States.

The Court: All right. Overruled.

Mr. Jeffrey: May I have an exception, your Honor?

The Court: Yes.

Let the record show that Exhibits 1, 2, 3 and 4 are read in evidence and the objection sustained as to Exhibits 5 and 6.

The said Government's Exhibits Nos. 1, 2, 3 and 4 were admitted and read in evidence.

The Court: Do you have any objection to Exhibit 13?

Mr. Jeffrey: Yes, Yes, I objected a while ago, your Honor, to Exhibit No. 13 on the theory that it was not in any
89 way described in the indictment. The defendants are not charged with having had that, and it has not been shown to be an offense to possess it.

The Court: The objection will be overruled.

Mr. Jeffrey: May I have an exception, please?

The Court: It is just one of the items of evidence which would show how the impression was made, if there was an impression.

The said GOVERNMENT'S EXHIBIT NO. 13 so offered, was admitted in evidence.

The Court: Now, as to the other exhibits, Exhibits 7 to—

Mr. Pfister: 7 to 27, with the exception of 13.

The Court: Yes. You can examine them.

Mr. Jeffrey: All right.

The Court: I will sustain the objections as to Exhibits 5 and 6, and we will have the cross-examination after lunch.

The Court: You may proceed.

Mr. Jeffrey: Your Honor, the defendants, and each of them, wish to object to the admission in evidence of Exhibit 7, which purports to be a leather case with some colored fluids in it; Exhibit 8, which consists of some metal pans in which fluids were mixed; Exhibit 9, which is a rubber-coated metal roller; Exhibit 10, a mortar and pestle; Exhibit 11, which is a graduate tube, used in measuring fluids; Exhibit 12, a graduate flask; Exhibit 14, a stack of blotters.

Now, to each and all of the exhibits numbered and named, the defendants object for the reason that the indictment does not charge either of the defendants with having any of these articles in their possession or that the possession of them was a violation of the law; and for the further reason that the
90 admission in evidence of either or all of these articles would not tend to prove or disprove that either of the

defendants made such impressions as are described in the first count of the indictment, or that either of the defendants possessed paper as described in the second count of the indictment.

The Court: Overruled.

Mr. Jeffrey: May I have an exception, please?

The said GOVERNMENT'S EXHIBITS NOS. 7 to 12, inclusive, and the said GOVERNMENT'S EXHIBIT NO. 14, so offered, were admitted and read in evidence.

Mr. Jeffrey: The defendants, and each of them, object to the admission in evidence of Exhibits 16 and 17, which purport to be glass plates used in the transfer process, for the reason that these defendants, and neither of them, is charged with the transfer, and that a transfer does not constitute an offense under this indictment or within the meaning of the statute, and it is not alleged or shown that either of said exhibits was used, or could in any way help, to make any impressions as are described in the first count of the indictment.

The Court: Objection overruled.

Mr. Jeffrey: An exception, please.

The said GOVERNMENT'S EXHIBIT NOS. 16 and 17 so offered, were admitted and read in evidence.

The defendants, and each of them, object to the introduction in evidence of the following numbered exhibits: No. 20, which purports to be a medicine dropper; 21, a test tube; 22, an alcohol lamp; 23, a bottle of unidentified fluid; 24, a bottle of after-shave lotion; 25;

91 The Court: Containing what?

Mr. Jeffrey: After-shave lotion.

(Continued)—25, a bottle containing an unidentified fluid; 26, a bottle containing unanalyzed white crystals; Exhibit 27, a roll of absorbent cotton; for the reason that the defendants, and neither of them, are charged in the indictment with the possession of any of these articles; the possession of none of these articles is made unlawful under any statute, and it has not been shown wherein any of these articles could be used in aiding to make such an impression as is described in the first count of the indictment; and for the further reason, as to Exhibit 23, a bottle of unidentified fluid, Exhibit 25, a bottle of unidentified fluid, Exhibit 26, a bottle containing unanalyzed white crystals, that it is not known what these are and they could not assist in determining whether the defendants, or either of them, has committed any offense as charged in the indictment.

The Court: Well, let the witness testify as to these last bottles. Let's see what they are, what he saw the defendants do with them, and we will take that question up.

Mr. Jeffrey: All right.

The Court: Take up each exhibit, Exhibit No. 19 and then the others that are objected to.

Exhibit No. 19 was with reference to the crayons.

Mr. Pfister: All right, sir.

THOMAS A. GALLAGHER, a witness on behalf of the Government, being recalled, testified as follows:

Direct Examination (resumed) Questions by Mr. Pfister.

92 All the exhibits referred to were found in the room occupied by the defendants.

Two of these bottles contain fluids of bulish tints and one of the two—I can't identify which of the two—was taken from this case and some of its contents added to other fluids, previously in one of the metal containers identified as Exhibit 8, into which, subsequently, notes or impressions or both were immersed in the course of the operations. Two of these bottles are of a dark brown—contain fluid of a dark brown shade. One or the other or both of those bottles, containing brown fluid, were used, on October 7th or 9th, or both, by the defendant Raynor. I saw the fluids, or one of them is the fluid which was used in preparing the two sheets of white paper to take off the impressions from genuine bills.

Government's Exhibit No. 8 consists of the entire collection of four or five metal containers, seized in Raynor's room, and some or all of them were used at one time or another in moistening papers which were used in the operation. Government's Exhibit No. 9 is a rubber—a cylinder of rubber with a steel or iron center, which was seized on October 9 by Operative George B. Loy and myself in the room occupied by the defendant Raynor, at the time of his arrest, and it is the cylinder which was used by the defendant Raynor, in my presence, on October 7 and again on October 9, in making reverse transfer impressions from genuine United States currency. Exhibit 10 is a mortar and pestle of the type used by chemists or druggists, and it was used by the defendant Raynor on October 7 and again on October 9 in pulverizing some

white crystals, which he then mixed with a fluid and
93 added to one of the solutions being used for immersing the papers which were used in the transfer.

The Court: That was taken from what exhibit?

The Witness: It is one of the higher numbers—twenty something, I believe.

The Court: What exhibit were the white crystals?

The Witness: Exhibit No. 26 were the white crystals which were pulverized with this mortar and pestal, and later used, or at least added to the one in which the papers were immersed in the process of transferring impressions.

Everything done by Raynor in my presence, was also done in the presence of the defendant Fowler.

No. 11 is a graduated tube, used for measuring the quantity of liquids. Exhibit 21 is an ordinary chemist's test tube. Into both of these pieces of apparatus fluids were placed and measured or heated and subsequently added to the fluids in Exhibit 8, the metal pans, in which subsequently papers were immersed, this being represented by the defendant Raynor to be a part of the transferring operation whereby the impressions were made.

Mr. Pfister: As I understand, Exhibit 13 is in evidence.

The Court: Yes.

Exhibit No. 12 is a graduated beaker, used for measuring fluids and into it, on October 7th and 9th, the defendant Raynor poured certain quantities of colored liquids, measuring them, so far as I could observe, and subsequently used those liquids in moistening papers which were employed in one or another phase of the transferring of impressions from genuine notes to other paper.

Exhibit 14 is a quantity of ordinary blotters—absorbent papers—which were employed by the defendant Raynor,
94 on October 7 and October 9. He used some from among these blotters to cover the transfer impressions, which he had made, and to hold those papers while the purported transfer was being made from them to the other papers which he represented were genuine Government papers. The small pieces among those are pieces of blotter which were torn up by the defendant Raynor at the time he was being placed under arrest. I must correct that—the defendant Fowler. Raynor didn't tear the blotters.

Government's Exhibits Nos. 16 and 17 are two pieces of glass, with the aid of which the impressions were transferred from the genuine notes on to previously prepared papers.

The papers, as previously described, were wrapped around a roller, Exhibit 9—is it? The smaller of these glasses was rolled across Exhibit 9 with these papers wrapped around it, the pressure applied being the means by which the reverse impression was transferred from the genuine note onto the previously prepared papers, these acts being done by the defendant Raynor in my presence.

Government's Exhibit No. 20 is a medicine dropper, which was employed by the defendant Raynor in my presence, on October 7th and 9th, to place minute quantities of various fluids in the previously prepared mixtures, into which papers were later immersed for transfer purposes.

Q. I hand you Government's Exhibit No. 21.

A. May I say papers or genuine bills, or both, with regard to Exhibit 20, were immersed for transfer purposes. I believe this was identified previously, Mr. Pfister.

Mr. Pfister: There was an error, I spoke of it as Exhibit 12 and it should have been 21.

95 The Court: 21.

Mr. Pfister: Yes, sir.

A. (Continued.) Exhibit 21 is a test tube, in which certain of the fluids were heated.

Q. I hand you Government's Exhibit 22 and ask you to state what it is.

A. It is an alcohol lamp, which was used in heating fluids in the test tube, just identified as Exhibit 21.

Government's Exhibit 24, is a partially filled bottle of after-shaving lotion. Raynor explained that by adding it to one of the pans he would take off that unpleasant smell from the original bill. He did pour some in the solution.

Q. Government's Exhibit No. 26, Mr. Gallagher, I believe you identified a moment ago as a bottle containing unanalyzed white crystals. You have identified it in connection with something else.

Government's Exhibit No. 27: state what it is.

A. It is a partially used package of absorbent cotton.

The Court: Did you see it used?

The Witness: Your Honor, the defendant Raynor used it in applying the brown fluid to the papers to make the transfer from genuine bills.

The Court: Is that all of your exhibits?

Mr. Pfister: Yes, your Honor.

The Court: The objection will be overruled except as to

the ones to which I sustained the objections as the witness testified.

The said GOVERNMENT'S EXHIBITS NOS. 20, 21,
96 22, 24, 26, and 27, so offered, were admitted in evidence.

Two days before the arrest, immediately after our demonstration by the defendant Raynor of October 7th, Fowler asked me whether I was very much impressed with what I had seen, and I answered that I would rather make money legitimately, if I could, and Fowler replied that he had been in rackets for a good many years and expected to die in rackets and would prefer to make his money that way, even if he could make it the other way.

Mr. Pfister: Now, if the Court please, I am not sure about this Government's Exhibit 3.

The Court: Yes, that was admitted. That is the one where he testified as to being a likeness.

The Witness: Yes. It is.

The Court: Do you have a record there, Mr. Carpenter, of the exhibits that were admitted and the ones that were not?

The Reporter: No, I haven't Judge. I haven't had an opportunity to bring my exhibit list up to date.

The Court: You can check on that before we close the case. I have admitted all of them, now, with the exception of the ones that I sustained the objection to as we went along.

Mr. Jeffrey: As I understand it, your Honor, the only exhibit, now, on the question of similar paper, is that exhibit numbered 3, isn't it? The other exhibits, the papers that were seized, are none of them in evidence?

The Court: How about the two on which the impression was made? Was there some evidence that they were similar paper? Those were exhibits 1 and 2 weren't they?

Mr. Pfister: Those were Exhibits 1 and 2, yes, sir.

The Court: Did you testify to the similarity of that paper?

The Witness: I was not asked as to that, if the Court please.

97 Q. Mr. Gallagher, I hand you Government's Exhibits numbered 1 and 2 and ask you whether or not the paper bearing those impressions, is similar to that adopted by the Secretary of the Treasury of the United States for the making of obligations and securities of the United States, and whether or not that paper is adapted to that use.

A. In my opinion, it is not.

The Court: Then the one exhibit is the only one.

Mr. Pfister: That is right, your Honor.

The Court: All right. Of course, the charge isn't that they made the impression upon papers of that kind.

Mr. Pfister: That is right.

The Court: All right.

Cross-Examination by Mr. Jeffrey.

Defendants' Exhibit number 1 is a sheet of water marked white paper. It bears the watermark "Eaton's Eminence Bond." It was seized from the defendants.

Defendants' Exhibit No. 1-A is a sheet of water marked paper. It bears the impress, "Horder's Rag Parchment." It has been cut to the size of genuine United States currency. It was seized with the other pieces of paper from the two defendants.

Defendants' Exhibits 2, 3, 4 and 5 are pieces of what appear to be white bond paper. Two have no water mark. One is watermarked "Eaton's Eminence Bond," and one bears a portion of a watermark which reads "U.P.S.A." Each of these Exhibits were among the other paper seized of the defendants. They have points of similarity to the distinc-
98 tive paper adopted by the Government. Some of them could be made adaptable for the purpose of making United States Government Obligations or securities. It is a question of how they would take inks. Among other things, they would have to be made of the proper size. They would have to bear something acceptable in similitude to the red and blue lines which are the distinctive characteristic of the Government paper. They would have, necessarily, to be suitable as to ink absorbent quality and their ability to take the sizing and other treatments which are employed in the printing of the genuine currency.

If some of these Exhibits were immersed in water for a few minutes they would retain their form, in my opinion.

The witness was handed a glass of water, selected Exhibits 1 and 1-A, and put them in the water at two thirty-seven P. M.

Q. Now, do you know what goes into the formula of the distinctive paper, adopted by the Government, about which we have been speaking.

A. I have never seen it manufactured.

Q. You have never seen it manufactured. Do you have any sample of it here?

A. I have currency on which the impression has been printed.

Q. You have no blank sheet of it here—

A. I have not.

Q. (Continued)—that had not been used in printing, or anything like that?

A. I have not.

Q. Isn't it a fact, if you did have a blank sheet of this distinctive Government paper and placed it side by side with any of the exhibits offered in this case, that there is a
99 noticeable distinction and difference in that paper—that there would be?

A. That is, between these which I have?

Q. Between any of the exhibits, which you have out here, and the distinctive Government paper.

A. Yes, I would notice a difference.

Q. Now, tell the jury what sort the differences are that you would notice.

A. The difference that occurs to me first is that the genuine Government paper is interspersed with red and blue curls or twists, whereas I fail to find them in any of these.

Q. What are those red and blue curls? What are they made of?

A. They are silk fibers.

Q. Are they put in the Government paper by a special process?

A. They are put in the molten pulp and worked through the paper.

Q. That is a distinctive and expensive process in manufacturing paper, is it not?

A. I don't know anything about the cost accounting.

Q. It is supposed to be a secret process, isn't it?

A. I can't answer that.

On Saturday, October third I received a telephone call at my home from Cones which was my first knowledge of the affair. I made an appointment to meet Cones in the Secret Service office on Monday evening, October fifth. I met Cones at that time.

What I call an impression is a reproduction in reverse of that which appears on the face and on the back of a genuine United States bill, made by what is known to us as the transfer method, and, likewise, as the transfer method of counterfeiting, on occasion. Government Exhibits 1 and 2 are what

I refer to as the impressions. In my opinion it is a likeness of money.

100 It has a border like the genuine bill; it has the numerals in the corners; it has the reproduction of the lathe work; it has the Federal Reserve seal; it reproduces the signatures of the Secretary of the Treasury—the Treasurer of the United States; it has the legend letters, "Twenty"; it has, in all the four corners, the designating numeral of the Chicago Federal Reserve Bank.

Q. Now, then, the position of the figure "20" on that Exhibit 1 or 2, whichever it is, is in reverse, isn't it, and appears as "02" backwards?

A. It does.

Q. Is there anything about it, in your opinion, that is, calculated to deceive anyone into thinking that that is meant to be "20"?

A. Yes, if one reads the "2" as anything at all, one must recognize that it is a part of the figure "20" in reverse.

Q. In order to deceive anyone into thinking that it was money—what you have there—it would have to be changed about,—

A. It would.

Q. (Continued.) —wouldn't it?

A. It would.

Q. In its present form, there isn't anything about that that could deceive anyone into thinking that it was money, could it?

A. No.

The Court: Does the statute say or the courts hold that that impression has to be such that it would lead a person to believe it was money? As I understand it, it is an impression from which money might be made.

101 Mr. Jeffrey: That is right.

The Court: Now, if you could take those two impressions and put a piece of paper between them, which was adapted to making money, and transfer those impressions, then, to that piece of paper, wouldn't that make a twenty dollar bill? That is my thought as to what that statute means. It doesn't mean that the impression has to be such that you would construe it to be money.

Mr. Jeffrey: But the impression has to be such as might be used in the making of money.

The Court: All right.

The impression isn't as distinct as the original. If any

other transfer or impression was made from that it would still be more indistinct. This impression could not be transferred to any other piece of paper and made as distinct as it now is unless they would attach it. It couldn't be made any more distinct than the original, of course—than the piece that is here. The reasons I call Exhibits 1 and 2 impressions is that I don't feel that distinctness has anything to do with the definition of the word "impression". If it were recognizable at all, in my opinion it would be an impression from the original from which it was reproduced. A "transfer" impression is the term I intended to use. My idea of the definition of an impression is, I would presume the dictionary would say, "that which is impressed."

Q. It is something beneath the surface, isn't it, some dot or line pushed underneath the surface?

A. I think the definition would be, "the depression in the inside of an impression."

Q. Well, now, what that is there is neither a depression nor an impression. It is really something placed on top, 102 isn't it,—what you have in your hand—a transfer of ink on to something else?

A. It is superimposed on the paper.

Q. It is superimposed, isn't it, and, then, it is really, you might say, an expression, if anything, instead of an impression, isn't it?

A. I think our orthography is getting a little beyond me.

Mr. Jeffrey: He has testified that these were impressions, and I am trying to see whether they are or not. Maybe they are and maybe they are not. That is what I am trying to do.

The Witness: I don't know what the word "expression" would mean in this case, but it is an imprint—it is a reproduction in reverse, and that, in my opinion, is an impression in reverse.

Q. In making whatever Exhibits 1 and 2 may be, there was no metal at all used, was there?

A. No.

Q. Whatever appears there is taken entirely from another piece of paper by some method of transfer? Is that right?

A. That is right.

Q. There never was, at any time, any kind of an instrument used which might make an imprint or impression beneath the surface of that paper? Is that right?

A. In all likelihood, some of this ink, which is transferred, is beneath the surface of the paper. That is the usual experience when ink is transferred.

Mr. Jeffrey: I move to strike the answer out, your Honor.

The Court: Just answer the questions. Go ahead.

At seven minutes to three P. M. the witness removed Exhibits 1 and 1-A from the water, examined the wetted
103 portions of them and tore off a small piece from each end.

From your experience with Government paper, would a Government paper or piece of paper money, if placed in the water there like that for that length of time, have torn that easily?

A. I have never torn paper money that was soaked for fifteen minutes.

Q. Would it be as limp or lifeless as that paper is, there, now?

A. I have never immersed a bill in a glass of water for fifteen minutes.

Q. Will you take one of those exhibits by the dry end and hold it up so that the limp end may be seen? (The witness attempted to comply with the request of counsel.) No, the other way—the limp end up, please. I want you to hold it by the dry end so that you can see what the limp end does—whether it has any body to it. (The witness complied with the request of counsel). After having seen that paper there and seen what the water does to it, would you say that either the Defendants' Exhibit 1 or the Defendants' Exhibit 1-A is such paper as is adapted to the making of Government obligations?

Any of these exhibits is the kind of paper that Exhibits 1 and 1-A are on. I didn't learn anything from these papers which told me what (Government) Exhibits 1 and 2 will do because they are not the same kind of paper. Government's Exhibits 1 and 2 are neither one of them of any paper that is adapted to Government use. Government's Exhibit 3 is paper which is adapted to Government use. It differs from defendants' Exhibits 1 and 2 in that it is impregnated with

the distinguishing feature of Government paper, the first
104 distinguishing feature, which is the red and blue curls.

You need an analysis to determine what makes the red and blue curls that are on Government's Exhibit 3. I can recognize them as being similar in appearance. By looking at them I can tell they are drawn on the surface of the paper,

but by looking at them with a glass they are still sufficiently deceptive to me that I couldn't state positively what makes them. I think they might be ordinary blue marks of a blue pencil but I wouldn't state that positively. I could tell by tearing the paper whether they are silk threads. They would deceive me under casual observation. If the marks were put there by crayon or red and blue pencil, they have been there for more than a month and aren't blurred and haven't disappeared. It would take an actual test, I should think to find out if they would blur or disappear by handling.

Q. Well, now, do you undertake to tell the jury that one of those pieces of paper, which you have there, may not be adapted to use as a Government obligation, but, by putting some of those red and blue marks on them, that that adapts them to the use?

A. This piece was apparently adapted by that simple expedient.

Q. Is it adapted for the use as Government paper?

A. If it has the other necessary qualification.

Q. Aside from the red and blue marks, the paper is the same as Defendants' Exhibits 1 and 2, or one of them, is it not? Can you examine these and say whether or not it is the same quality?

A. Exhibit 3 is the same as 1 and 2?

Q. Yes.

A. Oh, no.

Q. What is the difference between Government's Ex-
105 hibit 3 and Defendants' Exhibits 1 and 2?

A. I confused Defendants' and Government's exhibits. You say if the Government's Exhibit 3—

Q. Yes.

A. (Continued.) —is the same as—

Q. Is the same quality and type of paper as either the Defendants' Exhibit 1 or Defendants' Exhibit 2.

A. Well, it is a part rag bond paper, which crinkles in the same way. As to chemical content, I couldn't answer that. A chemist would really have to analyze it.

Q. Well, then, you don't undertake to testify, at this time, what kind of paper that Government's Exhibit 3 is, do you?

A. No.

Q. You haven't had it analyzed?

A. I have not.

Q. And you don't know what the rag content of it is? Is that right?

A. That is right.

Q. And you don't know anything about that piece of paper, Government's Exhibit 3, except that it crinkles and crackles and has some blue and red marks on it and that that adapts it to use as a Government obligation? Is that right?

A. It has that and the other features that I have previously mentioned in my testimony.

It is approximately the same weight, I did weigh a piece of the same size as against a piece of genuine currency, and the slight difference that existed would probably be accounted for by the addition of the ink to the genuine bill. I
106 didn't caliper it or make any test if it was thinner than is the Government paper.

Returning to the Government's Exhibits 1 and 2, anything written there which is not to be read is simply an impression. There are such things as the lathe work on the border of the bill, and certain parts of that are the same, whichever way you look at them, frontward or backward. I would have to take a glass to read some of the finer print or some of the smaller words on the Government's Exhibits 1 and 2. I can read "United States of America," "Federal Reserve Note," "20," "Washington, D. C.," "G," which is the Treasury or the Federal Reserve Seal. The parts which are small I would have trouble reading if they were not in reverse. In reverse, of course, it is confusing.

Q. Then all of those which you have said that you have read, you have used the reflex powers of your mind to look at them backwards—they are all reversed on the paper?

A. Yes, sir.

Q. The small parts, you can't read, can you, without a looking glass or a mirror or a magnifying glass?

A. No.

There was no kind of a plate or an engraving used in making either of those (Government) Exhibits 1 or 2. The Government does not use paper which has no silk fibers in it for making Government obligations or securities for the printing of money. I would rather tear Government's Exhibit 3 to be positive of whether those are silk fibers.

Q. If there is no objection, Mr. Witness, I would like to have you take Exhibit 3 and make some such a test, or any test you wish, there, to determine whether those are silk
107 fibers or crayon marks or what they are.

A. I should like to have a pin, if I may do that.

Mr. Caughran: If the Court please, I feel that this is

objectionable for the reason that the witness has testified that, in his opinion, this paper is similar to the Government paper—genuine Government paper—and he has not said it is similar in every respect, but he has named a number of respects in which it is similar, and I don't believe that—

The Court: I think he testified it was similar to the extent that it would be deceiving to a person of ordinary—

Mr. Caughran: That is it exactly.

The Court: That is the intention of the statute.

Mr. Caughran: That is it exactly. Chemically, we don't claim that it is the same.

The Court: It doesn't have to be, as I understand that statute.

Mr. Jeffrey: It has to be suitable for use.

Mr. Caughran: It has to be similar to and suitable for use. Now, of course, if we had to have silk threads running through it, it would mean that we would have to have a Government formula, a Government paper, really, before one could be guilty of this offense. It isn't the theory, in this case, at all, that this is genuine paper.

The Court: That is all contained in the statute, and the statute has reference to paper which could be used and would be so similar, if it was used to make money, that it would deceive a person of ordinary understanding. That is your theory in questioning about whether or not it would deceive anyone?

Mr. Jeffrey: No, your Honor, courts have held that it has to be adapted to use and that being similar enough to
108 deceive someone is not sufficient.

The Court: You asked that question a while ago.

Mr. Jeffrey: All right. Well, may I have the witness tear the paper and tell me whether there are silk threads in the paper, or put a pin point in it or whatever he wants to do?

The Court: Whatever examination you want to make, Mr. Witness.

The Witness: With a pin, you could lift out the silk fibers. That is about the best way to test it. I would like to have just an ordinary pin, if you have one.

A Juror: Here is one. (Handing pin to witness.)

The Witness: Thank you.

Mr. Pfister: If the Court please, Mr. Nolan suggests that the jury ought to be permitted to see that paper before any alterations are made on it.

The Court: He isn't going to make enough to destroy it.

The Witness: I have dug into the paper, on one of the lines, and find that it is not solid matter; it is something on the surface of the paper.

Q. It hasn't any silk thread in there?

A. It isn't a thread.

The first time he made the demonstration was the only time he reported that he was giving me anything other than a genuine Government paper. He did represent to me that it was one that he had made, himself, when as a matter of fact, it was a genuine United States obligation. Government's Exhibits 1 and 2 were taken from Government's Exhibit 4, not from Government's Exhibit 5, which has a paper pasted over the serial number of the bill, superimposed, but if you will take off the strips that are superimposed on that, I think you will find underneath at least some of the 109 serial numbering because the one which was used did not have the serial numbering covered up, but actually did transfer the serial number. The Federal Reserve twenty dollar note that was actually used in making the transfers or impressions on the Government's Exhibits 1 and 2 did not have any strips of paper superimposed over the serial number. No impressions of any kind were ever produced by either of these defendants in the positive form except for a faint impression which came off of one of them, just by a casual contact onto Exhibit 3. You can see where it is in the positive form. The impressions referred to by me are in the negative form.

Redirect Examination by Mr. Pfister.

Government's Exhibits 1 and 2 were between two of the blotters which were torn by the defendant Fowler in the scuffle for possession of them at the time he was placed under arrest, and just one corner of those blotters was torn and those exhibits along with them.

Recross Examination by Mr. Jeffrey.

The particular line I had under examination on Government's Exhibit 3 was not a silk thread; it was a surface line of some sort. The Government does not use any paper for printing its currency and bonds unless the paper has silk threads in it.

110 JOHN O. BURTON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Caughran.

My name is John O. Burton. I live at Washington, D. C. I am a chemist connected with the United States Government in the Treasury Department, Bureau of Engraving and Printing. There is where all valuable securities and currency of the United States are printed. I have been there a year and two months. Previously I worked at the Naval Research Laboratory and the Bureau of Standards of the Department of Commerce. The Bureau of Standards of the Department of Commerce does work for the Treasury Department pertaining to analysis of different kinds of papers. That was my major duty for four years. I have studied many kinds of papers. My main duty now is to examine all materials for the manufacture of currency and securities which are delivered to the Bureau of Engraving, to see that they meet the specifications under which they are purchased. The Government obtains the paper upon which the obligations of the United States are printed on an annual contract from a private concern. To describe the process by which that paper is manufactured and transmitted to the Treasury Department, Bureau of Printing and Engraving, it is made on an ordinary paper machine, a Ford-Rinier paper machine. As soon as it comes off of the machine, it is put under Government guard, cut to the size specified by the Government, put in wooden cases which are sealed, the wooden cases put in freight cars which, in turn, are sealed and they are delivered to the Paper Custodian in the Treasury Department, in Washington.

That process of transfer is all made under guard. The Government of the United States is the only individual or organization or corporation in the United States which is permitted to have any of the paper that the Government
111 does use. Prior to October 9, 1936 the Secretary of the Treasury had adopted a distinctive paper for the making of obligations of the United States, including twenty dollar notes. The present paper was adopted about 1928. The Secretary of the Treasury at no time, either before the distinctive paper is delivered to the Bureau of Printing and En-

graving or thereafter, ever allows any of that paper to be distributed or to be handed out to private individuals or to anyone else. I have with me some of the genuine paper upon which the Government prints its twenty dollar bills, and other bills. It is Exhibit No. 28 and is United States currency paper—distinctive paper which was adopted by the Secretary of the Treasury about 1928. It is a high grade rag bond paper with silk fibers distributed throughout—short, fine silk fibers. The distinguishing features made noticeable without an analysis are a sharp rattle and very little gloss. The most distinguishing feature is the red and blue fibers visible to the naked eye, resembling, without careful examination, red and blue lines.

Government's Exhibit No. 3 is similar to Exhibit No. 28, genuine Government paper. The first thing noticeable is the red and blue lines on the surface. It is approximately the same weight; approximately the same thickness; it isn't pure white paper, which is also similar to currency paper. It has approximately the same gloss and I should say approximately the same opacity, and, rattle which go with a bond paper.

Government Exhibit 3 is adapted to the making of obligations and other securities of the United States.

Q. Now, why do you say that?

A. Because most any bond paper could be used for the printing of securities.

The additional feature Exhibit No. 3 bears, that ordinary bond paper does not have, are the red and blue fibers.

112 I have had some experience since I have been with the Treasury Department with counterfeit paper money. I have examined twenty to twenty-five different samples of it. Counterfeit money is not ordinarily made upon genuine Government paper.

Q. From your experience with counterfeit money and your other experiences in the Treasury Department, analyzing paper and so on, state whether or not, in your opinion, if the Government Exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a twenty dollar Treasury note, that paper, Exhibit 3, is such a paper that would pass currency in the general trade of the country.

Mr. Jeffrey: Now, to which, your Honor, the defendants object because the question has reference to counterfeit money, and the fact that this paper in Exhibit 3 might or

might not be suitable for use in counterfeit money has nothing to do with this case and does not in any way tend to prove that it is adaptable to use for the printing of real obligations of the United States.

The Court: Read the question.

Mr. Caughran: Begin with "your experience." Is that satisfactory?

(The Reporter read the preceding question, amended as follows: "From your experiences in the Treasury Department, analyzing paper and so on, state whether or not, in your opinion, if the Government Exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a twenty dollar Treasury note, that paper, Exhibit 3, is such a paper that would pass currency in the 113 general trade of the country.")

A. It is.

Mr. Jeffrey: I object to that, your Honor, because it is not the test, in this case, whether it would pass currency. The test in this case is whether that piece of paper is adapted to the making of Government obligations and securities.

The Court: Well, this would be one test of it. That is, perhaps, one test. Go ahead and answer the question.

Mr. Jeffrey: May I have an exception to that?

The Court: Yes.

A. In my opinion, it is.

Cross-Examination by Mr. Jeffrey.

I do not know whether the red and blue lines on Exhibit 3 are silk fibers. I have not examined it with care to determine that. Under the glass they have approximately the appearance of a fiber.

I cannot tell by looking closely that they are pencil marks. I could determine by a test whether they are fiber or pencil marks. It was submitted to me for an examination and I looked at it here in Indianapolis. I didn't take it and really determine the chemical contents or the rag content or make any careful or complete examination so that I could tell whether those were red and blue fibers or blue and red pencil marks. I did not have access to the sample.

The precautions about Government paper are taken to have a distinctive paper which will offer as many difficulties as possible to reproduce, and also make as high grade and as

strong a paper. The silk threads are not put in there to
114 hold it together and keep it from getting limp when it becomes wet, but to identify it. It is not the rag content that keeps it from becoming limp when wet. It is the sizing. Defendants' Exhibits 1 and 1-A are different from Government's Exhibit 3 in that they have a water mark which Government's Exhibit 3 does not have. By watermark we mean a thin place in the paper made when the sheet is wet on the machine, so that, when held up to the light, it is more transparent than the rest of the paper and shows up as a word or design. That name is a watermark. That could not necessarily be cut off of Exhibit 3 so that it would not show. It all depends on how close that watermark is put in that paper. Government's Exhibit 3 is not quite as white as the other two exhibits. It has more of a yellowish tinge. I don't know whether that would come through ordinary typewriting paper having become wet.

Defendants' Exhibits 1 and 2 are such stock or bond as is ordinarily used for typewriting paper. I cannot detect any difference in color between where they were wet and dry.

Those two exhibits are about the same weight and thickness. The Government's Exhibit feels smoother and I believe has lower opacity than the defendants' exhibits 1 and two.

I don't believe defendants' exhibits 1 and 2, or a paper similar to them, without the name on there and with the blue and red pencil marks placed on there like Government's Exhibit 3, would be quite as adaptable to making Government's obligations as is Exhibit 3.

Q. But they would be adapted under the definitions you have given, wouldn't they?

A. Yes, sir.

Q. Then, under your definition, you can go into any
115 bookstore or place where they sell a good high quality bond typewriting paper and purchase paper which is, or can be, adapted to the making of Government obligations? Is that true?

A. Yes, sir.

Q. Would it, in its present form, be adapted, or what, if anything, would be necessary to adapt it to making Government obligations?

A. A good high grade bond paper, without a water mark, could be made distinctive with red and blue lines, in some way, and would then be suitable and adaptable for the manu-

facture of Government securities which would pass in the ordinary run of commerce, I believe.

Q. Does the Government ever print any money or bonds or obligations on that type of paper that you would get in a book store?

A. They print it on only the one kind.

Q. Only one kind. Why do they only print it on that one kind?

A. Because it is the distinctive paper that is legally required for the printing of Government securities.

Q. If any other company or book store undertook to sell any of this paper, which they have in stock and which is a good quality of bond typewriting paper, to the Government for the printing of Government obligations, the Government would not buy it, would it?

A: No, sir.

Q. Why?

A. Because it did not have the control of their guards at their mill and it doesn't have the red and blue silk fiber.

Q. And that paper would not be adapted to making 116 Government obligations? Is that right?

A. Not without red and blue fibers or lines.

Q. Well, now, do I understand that it doesn't make any difference whether those red and blue lines are superimposed in pencil or whether they are built into the paper, as it is manufactured, with silk threads?

A. If it is done cleverly enough, it could be put on the surface with a pencil and would pass casual observation.

Q. But the Government would not use any paper like that for printing obligations, would it?

A. No, sir.

Q. In order to conform to the Government regulations and the distinctive paper adopted by the Secretary of the Treasury, it must have the silk fibers in it?

A. Yes, sir.

The Court: Of course, in that event, it wouldn't be similar. The word "similar," in the statute means something. If it had to be the same paper, why, of course, there would be no offense, but it is similar paper.

The Government paper is rather tough and hard to tear. I have made a slight tear in the Government's Exhibit 3 to see whether it tears more easily than Government paper would. There isn't a great deal of difference. Government paper if crumpled up and smoothed out, leaves a crease. It

stays wrinkled up. Government paper is not designed and intended to withstand continuous wetting. It will not stand more wetting than most any other type of paper. I couldn't say whether it would stand more wetting without going to pieces than ordinary bond typewriter paper would, such as defendants' Exhibits 1 and 2. I never tested it for that
117 purpose. The Government does not wash its paper any nor clean it.

Q. It doesn't clean it. Would the Government paper, such as you have there and which is marked Exhibit 28, be suitable for ordinary use as typewriter paper?

A. Yes, sir.

Q. It would be rather expensive for that, though, would it not?

The Court: Of course, they couldn't get it. It isn't on the market, is it?

The Witness: A paper similar to it is.

The Government paper is not heavier and stiffer than any paper that is ordinarily used in a typewriter. There are many bond typewriter papers that are the same weight and thickness, or even greater than the Government paper. I have to return Government's Exhibit 28 to the Treasury.

(At the suggestion of the Court, and without objection, Government's Exhibit 28 was permitted to be exhibited to the jury, and then to be withdrawn from the record. At this time it, and Government's Exhibit 3, and the Exhibits 1 and 2 were exhibited to the jury.)

The distinctive feature about Government's Exhibit 3 are those little red and blue marks on there. That feature, and other similarities with currency paper are what, in my opinion, adapted it to the making of a Government obligation. I believe I mentioned several characteristics of that paper which would adapt it to a currency paper.

Q. But not without the red and blue marks?

A. Well,—

The Court: Of course, the red and blue marks are on there.

Mr. Jeffrey: Yes, sir.

118 Q. But what I am trying to ask you is this: If the red and blue marks did not appear on Government's Exhibit 3, then it would not be a paper adapted to the making of Government obligations, would it?

A. You could print them on it, but you could tell that it

was not the Government paper by the fact that there were no red and blue marks on it.

Q. Well, then, it would not be adapted to making Government obligations, would it?

A. You could print them on it and get just as good an impression and just as good a printing quality.

Q. I understand that, but bear in mind, please, that the Secretary of the Treasury has adopted a standard for making Government obligations. Now, that is true, isn't it, and, with reference to Government's Exhibit 3, it is not adaptable to such uses as are designed for that paper or for the making of Government obligations, unless it has those red and blue marks on there, is it?

A. Well, you could immediately tell that it wasn't, without the red and blue lines on it. It is adaptable in that you can print just as good on it.

Q. There isn't any paper that can be adapted to the making of obligations of the United States unless it conforms to the standard set by the Secretary of the Treasury, is there?

Mr. Caughran: If the Court please, that is an argument with this witness. I don't think it is proper.

The Court: Overruled. Go ahead and answer it.

A. Well, in my mind, the term "adaptable" means that it can be adaptable in some senses and not in others.
119 It cannot, if it is not absolutely adaptable—adaptable in every respect to the manufacture of currency.

Q. The Secretary of the Treasury has set a standard for paper, which he requires to be used in making obligations of the United States? Is that true?

A. Yes, sir.

Q. Now, the Government's Exhibit 3 would not conform to that standard unless it had some red and blue marks on it, would it?

A. No, sir.

Q. And without the red and blue marks on it, it would not be adaptable, then, to make Government obligations which are made by that standard of distinctive paper, would it?

A. By that standard, it would not be adaptable.

Q. Then you can take any ordinary piece of typewriter paper that is good quality stock, a bond such as Exhibit 3 or the Defendants' Exhibits 1 and 2 and such as you can buy in any store, and make it adapted to the making of obligations of the United States by skillfully placing the same red and blue lines on it? Is that true?

A. Not any paper, no, sir.
Q. Such as the grade that we have in mind, there?
A. Paper similar to that, yes.
Q. Yes.
A. Paper of that type could be.

They do not place red and blue pencil marks on the Government paper instead of building the silk fibers into it because it would be too easy to duplicate. Government paper doesn't consist of two pieces of paper fastened together.
120 A Government bill can be split and have two pieces of paper. It is split by wetting it and gradually working it apart. The two layers are separate. It has two surfaces. That is caused by the sizing of the paper. I could not say whether Government's Exhibit 3 could be taken and split. I made no test to determine that. I do not know whether a good quality typewriter paper, such as Eaton's Eminence Bond would have the same life, if carried around in the pocket, just the same as a dollar bill, or whether it would stand up just as long under the handling and carrying. I haven't tested it for strength. I wouldn't think a typewriter paper would break and holes appear in it if carried in the pocket for a few days. I would say several bond papers would have as good wearing qualities.

The Court: This paper that is printed into money: is it sized and treated in some way so as to prevent tearing?

The Witness: It is sized, yes, sir.

More precaution is taken to make it last a long time so that it will stand a lot of hard ordinary every day use. Some of these precautions are taken with the average good grade of bond paper. That is the purpose of bond paper.

I have no way of telling, without testing it, whether Government's Exhibit 3 is paper of a quality inferior to the paper in Government's Exhibit 28 or whether it is of equal quality. It has an appearance of being approximately the same type of paper, but I have not made any test of that and can't tell if it is the same or not. I am not prepared to tell the jury, at this time, that it is the same quality. I couldn't tell that. With reference to whether the red and blue marks on Government's Exhibit 3 could be erased easily if they are merely pencil marks, certain kinds of pencil marks can be erased. If it is a crayon with wax in it, it could not be erased readily. If it is a crayon with a dry pigment,
121 that could be erased. I don't know what kind of marks those are on there.

If they are marks that can be erased, then Government's Exhibit 3, would not, after the erasing, be suitable or adapted to the making Government obligations.

Not under the standard set up by the Secretary of the Treasury requiring the red and blue markings on it.

Government's Exhibit 3 can be made adaptable, or not adaptable, by using or taking off the red and blue marks, in regard to that distinctive feature of it.

(The witness is handed the original indictment and examines the front sheet of it with reference to the quality of the paper, at the request of counsel.)

It is a pretty good grade of rag bond. Having in mind the regulations and requirements of the Secretary of the Treasury, which have been adopted by him for paper used in the making of Government obligations, the first sheet of the indictment is similar to the distinctive paper of the Government in many respects, and could be made adaptable to making Government obligations by the addition of red and blue markings of some sort, by pencil or otherwise.

Q. And you make that statement in spite of the fact that the regulations of the Secretary of the Treasury require that this distinctive paper have silk red and blue threads in it?

A. Yes, sir.

Q. And regardless of that, then, in your opinion, if this paper were taken and pencil blue and red marks put on it, it would be such as to conform with the regulations adopted by the Secretary of the Treasury?

A. No, sir, it would not conform with the Treasury's requirement.

Q. And it would not be used by the Secretary of the
122 Treasury in printing obligations?

A. No, sir.

Q. Then it would not be adapted, and could not be adapted, to the making of those Government obligations merely by the adding of the blue and red pencil marks?

A. Not by the Treasury Department.

Q. And if those marks on Government's Exhibit 3 are red and blue pencil marks and not silk threads, then the Government's Exhibit 3 is not adaptable for the use or for the making of Government obligations, under the rules adopted by the Secretary of the Treasury for that distinctive paper? Is that true?

Mr. Caughran: If your Honor please, we object to the question because it is not the contention, and the witness has

not said, that the Government would ever take this particular piece of paper, Exhibit 3, and print a bill on it.

The Court: Well, of course, that is the very purpose of this statute. It is not genuine paper, of course. That is the very purpose of this statute. It is "similar and adapted to," I have said, two or three times, it wouldn't have to be exactly the same paper. That is not what the statute says and it is not what the courts have held on this subject.

Mr. Jeffrey: Well, does the Court sustain the objection?

The Court: Objection sustained, yes.

Mr. Jeffrey: May I have an exception to that?

The Court: Yes.

Mr. Jeffrey: Now, I would like to ask the witness to do one thing, if I may: to take the Government's Exhibit 3 and, without defacing it or anything, pick out one of those marks and take a clean eraser and see if he can erase it.

123 Mr. Caughran: I don't see that that has anything to do with this case at all.

The Court: Oh, he testified a moment ago—this, perhaps, hasn't anything to do with it—that certain kinds of pencil marks are more easily erased than others.

Mr. Jeffrey: My contention is this: that the Government is charged with the burden of proving that this paper is a distinctive paper and adapted to use in making Government obligations. Now, I say that the burden is on them to show what the paper is. They have not undertaken to analyze it. They have not undertaken to tell what the marks are.

The Court: I don't think it has anything to do with it at all, as far as that is concerned. I don't think the fact that it might be easily erased has anything to do with it.

Mr. Jeffrey: Well, as a question, then,—

Q. Mr. Witness, will you please take Government's Exhibit 3—now, don't do this yet—it is just a question. Will you please take Government's Exhibit 3 and take an eraser and endeavor to erase one of those red and blue markings, and see if you can erase it from the surface of that paper?

Mr. Caughran: To which we object for the reason that—

The Court: Objection sustained.

Mr. Jeffrey: May I have an exception?

The Court: All right.

Redirect Examination by Mr. Caughran.

The Secretary of the Treasury has the exclusive control over that specially adopted paper from the time it is manufactured and printed until it goes out in the currency of the country. No one else has any authority to do anything else with that paper, only under his direction. No one, under his direction, ever allows any of that paper to get out of the
124 Treasury Department, except for the purposes for which it was intended, under his authority.

The Court: You may take that paper with you. Let the record show, at this time, that Exhibit No. 28 is not read in evidence because of the fact that it is the original paper, brought here by the representative of the Treasury Department, but it has been exhibited to the jury along with Exhibit No. 3 of the Government and Exhibits 1 and 1-A of the defendants.

Mr. Jeffrey: That will be agreeable to the defendants.

If I may, I would like to ask one more question of the witness.

The Court: Just ask it, and you may answer it from where you are, Mr. Witness.

Q. Mr. Witness, the Government only has one standard of paper which it has adopted? Is that true?

A. For the printing of bonds and currency.

Q. And this piece of paper you brought here is not distinctive in any way from any other piece of paper that you would get from any other branch of the Government for the printing of paper money? Is that true?

A. No, that is exactly—

Q. In other words, if, at any time, we should want to produce a piece of genuine Government paper, it would be exactly like that, there?

A. Genuine currency paper, yes, sir.

Q. That is what I am trying to get at.

The Court: Unless the Secretary of the Treasury would change that.

Mr. Jeffrey: Yes, sir, that is true. Well, then, with that in mind, we have no objection to the exhibit being withdrawn.

125 And the United States here rested.

Mr. Jeffrey: I want to file a motion for a directed verdict.

The Court: I will overrule it.
Mr. Jeffrey: An exception, please.
The Court: Yes.

Whereupon, the defendants, to maintain the issues on their behalf, offered and introduced the following evidence, to-wit:

JOHN W. KELLER, a witness called on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is John W. Keller. I am assistant cashier of the Indiana National Bank. I have been with that bank twenty-four years and have had considerable experience in handling currency of the United States and its other paper obligations. I have familiarized myself to a certain extent with the touch and quality of that paper so that I can tell it from other kinds of paper.

I am not an expert on it or anything like that, but, just from the general feel, there is a difference between Government paper and other paper. Ordinarily it is the stiffness to it and yet, when the Government paper is old, it doesn't seem to tear quite as easy as other paper does.

When the Government paper is new, the way I am most used to handling it and is the way it comes into the bank, your fives are done up in a hundred fives in one package, making the five hundred dollars, and the same way all the way
126 through. It is done up in five hundred dollar packages with the exception of ones. They come in hundred dollar packages. The first thing you notice, as you count them off, is that snap to them and they are inclined to stick together a little bit, due to the fact that they have probably been put in bundles so tight, with pressure on them, that it has naturally made that condition, and, as they got older, that stiffness, of course, naturally is gone, yet there is a certain quality of the paper that holds up better than the average paper. Now, to describe that quality, I can't do it because I am not an expert on it. It just comes from handling the money so often and so much that we get the feel of it, but, to actually describe it in so many words, why, I am not capable of doing that.

I have read in some magazine, possibly Burroughs Clearing House magazine or Federal Reserve Bank magazine that the average life of a bill is around sixty days. It would depend

on how much it was handled. I have never seen holes worn in Government paper or currency. It keeps its edge fairly well instead of becoming frayed.

I have in my hands Government's Exhibit 28, and I cannot swear what it is but I heard the witness say it was United States Government paper. It feels like new currency as it comes in. Of course, you can see these marks on here of the silk thread. They are very easily distinguishable.

Comparing Government's Exhibits 28 and 3, the dissimilarity in it would be that it doesn't seem to me as being as heavy a quality as the other paper. I see some marks of some sort here. As to whether or not they are threads, I wouldn't particularly say they were threads, I would hesitate in saying by a closer examination with a glass what they are because I am not an expert.

127 Holding the two papers up to a light, I can see through Government's Exhibit 28 and see the silk threads in it.

You can't see silk threads in Government's Exhibit 3, although I believe I can see those markings through the light. Any distinction between the markings and the silk threads in Government's Exhibit 28 is that one is a mark and the other is a thread. If I were allowed to take an eraser and try to erase one, if it would erase, we would naturally know it was pencil. It wouldn't erase if it was a silk thread.

Mr. Jeffrey: Now, if the Court please, I ask that the witness be permitted to take an eraser and see if he can do that.

The Court: Oh, I think it isn't a question of whether it will erase or not. It is how it would appear to a person as he looks at it.

Mr. Jeffrey: I understand that.

The Court: You might be able to pull some of those threads out. I don't know.

Mr. Jeffrey: The point I was making is that I would like for this witness to be enabled to determine and tell the jury whether or not those are silk threads or merely pencil marks.

The Court: Well, I don't think there is any contention that they are silk threads.

Mr. Caughran: Not at all. There is no contention of that kind at all.

Mr. Jeffrey: All right. Then we will save a little time if the Government will agree that those are not silk threads.

Mr. Caughran: All right, we will agree that those are not silk threads.

Mr. Jeffrey: The record shows that as a stipulation:
128 that those are not silk threads in Government's Exhibit 3?

Mr. Caughran: That is right.

To me there seems to be a difference in the feel or in the touch between Government's Exhibits 3 and 28. The particular difference, is in the grade of the paper, and bear in mind I am not an expert, but, to me, the Government paper is a little stiffer than this other paper.

I have in my hand Defendants' Exhibits 1 and 1-A and 4. Comparing them with the touch or feel of Government's Exhibit 3, Government's Exhibit 3 corresponds more to Defendants' Exhibit 1 than the other two, apparently, with this exception: that possibly from handling, Government's Exhibit 3 is not quite as white as the other three papers that I have in my hand.

Government's Exhibit 3 and Defendants' Exhibit 1-A correspond substantially in quality and in touch, as far as I can tell.

Government's Exhibit No. 3 and (Defendants') Exhibit 1-A, in my feel, correspond more than they do to (Government's) Exhibit 28. The main trouble I find in all of these is this; that the Government's paper, to me, is a little stiffer, coarser than any of the other Exhibits. I do not know whether Government paper is ever washed but some years ago, when we tried it at the bank, it was very unsuccessful.

On Defendants' Exhibit 1-A it says Horder's Parchment. I don't see any water mark on Government's Exhibit 3.

Comparing Defendants' Exhibits 7 and 8 as to the type and quality of paper with Defendants' Exhibit 1-A, Exhibits 1-A and 8 seem to be of a similar feel, but Exhibit No. 7 doesn't. However, the water mark apparently seems to be the same. I am just going by the way this feels to me. I don't know anything about the quality of the paper. I
129 am just telling you the way it feels. I don't know what constitutes the makeup of Government paper, but I am familiar with the fact that there is one certain paper that is used and no one else is allowed to use it.

Q. I will ask you to state what, if anything, there is about it, that would make that good for paper money and what, if anything, there is about it what would make it unsuitable for use by the Government as paper money.

A. Assuming that there is only one certain paper which the Government can make their money on, on their bonds,

naturally, unless the paper is genuine and the same paper as that, it isn't adaptable for making their money or bonds on, yet there can be another paper that is a likeness of it, but, so far as being adapted for it, if the Government says they can only use one certain paper, that is the only paper that is going to be adapted for it.

Q. Now, you don't know, other than what you have heard here, why the Government would set down specific regulations in adopting that one paper, do you?

A. Well, I have heard that, of course, before: that that is the primary reason.

Q. Well, now, assuming that the Government's Exhibit 3—assume, for the moment, that the Government's Exhibit 3 does not correspond to the regulations adopted by the Treasury for the making of money, and, as you have heard, it does not have the silk threads in it, you may state whether, in your opinion, taking that piece of paper and putting red and blue crayon or pencil marks on it would make it suitable for use as Government currency or money.

A. I will have to answer that a little bit different. So far as the Treasury of the United States is con-
130 cerned, it would not be suited. So far as the average layman was concerned, possibly it would be.

Q. You mean, maybe, for making counterfeit money?

A. That is right.

Q. But not for making real money, no.

A. Not for making real money, no.

Q. It would not be suited to make real money of the United States?

A. No, because they specifically say that they have to have one certain kind of paper.

Q. And it has to have silk threads in it?

A. That is right.

Q. And Government's Exhibit 3 does not have the silk threads in it, so it isn't suited to make Government money, is it?

A. No. Very clearly that should be understood.

Cross-Examination by Mr. Pfister.

Exhibit 28 felt like it was heavier paper than Exhibit No. 3. Now, so far as the similarity is concerned, all of these papers are similar. As to whether Government's Exhibit 3 is similar to Government's Exhibit 28, if, by "similar" you

mean pretty near like it, I can say that about all of it. It is all similar. I will say that Government's Exhibit No. 3 is similar to Exhibit No. 28.

The Defendants' Exhibit 1-A and the Government's Exhibit No. 3 are quite similar. The feel of the other exhibits of the Defendants' does not feel similar. So far as the color of the paper is concerned they are all similar.

131 I see some markings on Government's Exhibit No. 3 but not clear enough that I can tell the color. They are sort of like a blue and red end, of course, I see a lot of very fine printing, here, of some kind, or something or other. I don't believe I find any such marking on any of the Defendants' Exhibits which have been exhibited to me.

BURNEY R. PARAMORE, a witness called on behalf of the defendants. being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is Burney R. Paramore. I have charge of the paper stock of the Burford Printing Company. I have been there six and one-half years during which time I have become familiar with the different qualities and types of bond typewriter paper that is sold on the market generally, as much as possible.

Defendants' Exhibit No. 1 is water marked "Eaton's Eminence Bond". It is made by the Eaton Paper Company of Pittsfield Massachusetts. They box it and sell it to stationers who, in turn, retail it. In 1935 it retailed for a dollar ninety a ream of eight and a half by eleven, on a twenty pound basis. A ream is five hundred sheets and legal cap is eight and a half by thirteen. That is about a medium price for a good quality of typewriter paper. Exhibits known as, 9-A and 9-B are some samples of Eaton's Eminence Bond.

Defendants' Exhibits 1, 9, 9-A, and 9-B are such paper as can be bought anywhere generally throughout the United States, at any bookstore or printing shop which handles Eaton's line. Defendants' Exhibit 8 is called Horder's

132 All Rag Parchment.

Government's Exhibit 3 can be readily determined as a piece of Rag Bond. It is very similar to Eaton's Eminence Bond. As far as I can tell from an examination, Government's Exhibit 3 is the type of Rag Bond paper that is on sale

generally and can be bought at any book store, with the exception of the marks on it. The red and blue marks I have reference to. It has been testified they are not silk threads, and with that exception, that paper is very similar to Eaton's Eminence Bond.

Comparing Government's Exhibit 28, Eaton's Eminence Bond which is Defendants' Exhibit 1, and Government's Exhibit 3, Government's Exhibit 3 is more similar to Defendants' Exhibit 1-A than it is to Government's Exhibit 28.

Cross-Examination by Mr. Pfister.

Q. What distinction is there between Government's Exhibit 3 and Defendant's Exhibit 9, that you have there in your book?

A. It is altogether a different texture of paper than the Defendants' Exhibit 1-A or 9-A, B or C—9 or 9-A or B, rather.

Q. You mean by that the Government's Exhibit 3 is not similar to the samples?

A. Insofar as texture is concerned, in my mind, it is not, no. That is, the formation of the fibers in this paper is not the same as the formation of the fibers in this paper (indicating).

Q. I can't see what you are holding.

A. This is Government's Exhibit 28 (indicating).

Q. I am not sure, now, that we are talking about the same exhibits. Referring to Government's Exhibit 3, which you hold in your hand, and to the Defendants' Exhibits 1, 9, 9-A and 9-B, tell to the jury whether or not those exhibits are similar.

A. As far as formation of the fibers are concerned, yes.

Q. And whether or not the Government's Exhibit No. 3 and the Government's Exhibit No. 28 are similar.

A. Not insofar as the formation of the paper is concerned, no.

They are both probably composed of pretty nearly the same material. I wouldn't say the markings are similar. They both bear markings. Neither of the Defendants' Exhibits 1, 9, 9-A and 9-B bear markings.

GEORGE W. HARGITT, a witness called on behalf of the Defendants', being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is George W. Hargitt. I am sales manager for C. P. Lesh Paper Company. I have been there thirty-five years. It is a big paper company here in Indianapolis. During that time I have come in contact with quite a few different papers. Defendants' Exhibit 1 is a piece of Eaton's Eminence Bond. Defendant's Exhibit 1-A is Horders Rag Parchment. Horders is the retail division of a big wholesale stationery house in Chicago.

Defendants' Exhibits 1 and 1-A are both such paper as is sold generally throughout the United States for typewriter paper. Any one can buy it. I cannot tell by looking at Government's Exhibit 3, what that is. For color it nearest matches Government Exhibit 28. For quality it nearer matches the other two sheets, Defendants' Exhibits 1 and
134 1-A. That question of color can be easily accounted for by too much sunlight. Light can necessarily cause a variation in white color.

Q. Are you prepared to say at this time whether or not, in your opinion, Government's Exhibit 3 is just an ordinary piece of typewriter paper, similar to the Defendants' Exhibits 1 and 1A?

Mr. Caughran: If the Court please, he has already said he couldn't identify Government's Exhibit 3. He said he didn't know what it was.

Mr. Jeffrey: I am just asking what his opinion is, whether, in his opinion, it is a piece of ordinary typewriter paper, similar to Defendants' Exhibits 1 and 1-A.

The Witness: I think it is.

The Court: Of course, on the question of similarity, he can take into consideration everything that is on there. We have got to take it just as we find it, you know. It might be a different grade—that is what makes the similarity if there is a similarity—as well as the weight and color. You have got to take them as the exhibit shows them on the similarity.

Mr. Jeffrey: Now, did you answer that last question, Mr. Witness?

The Witness: I am going to ask that the question be read.

(The Reporter read the preceding question as follows:

"Are you prepared to say at this time whether or not, in your opinion, Government's Exhibit 3 is just an ordinary piece of typewriter paper, similar to the Defendants' Exhibits 1 and 1-A?")

A. I would say so, yes, sir.

135 *Cross-Examination by Mr. Pfister.*

Government's Exhibits 3 and 28 are both white. They are not the same shade of white. The Government paper is harder. In my judgment, it has more sizing in it. What we mean by sizing, I mean glue, which all paper has to have before you can write on it, and I am sure that I could pick the two papers out any place, but that probably isn't what the average man could do. They are practically the same weight and they are both white. They are both rag content papers. The percent of the rag I do not know. I can see more of those so-called marks in this larger piece that is 28 than I can in the other. My eyes are not as young as they were. Under a magnifying glass I can see some marks on this No. 3, but not so many of them and they are not so distinct as 28.

JAMES B. NEWCOMB, a witness called on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is James B. Newcomb. I live in Indianapolis and I am Vice President of the Crescent Paper Company. I have been with it twenty years and during that time have come to know paper very familiarly. My company and the Lesh Paper Company are the two big paper companies here.

Defendants' Exhibits 1 and 1-A are Horders Rag Parchment and Eaton's Eminence Bond. After comparing them with Government's Exhibit 3, I think Government's Exhibit 3 is more similar to Defendants' Exhibits 1 and 1-A then to Government's Exhibit 28. The formation seems to be more similar. Exhibits 1 and 1-A are just ordinary typewriter

136 paper, a good quality such as is sold generally throughout the United States to anyone who wants it.

I would say Government's Exhibit 3 can be just a good quality of typewriter paper, similar to Exhibits 1 and 1-A, and which is sold throughout the United States to anyone who

wishes to buy it. It is hard to identify without a mark such as the other sheets have, but it is a sheet of rag content paper and no doubt could be used for that purpose very readily.

Cross-Examination by Mr. Pfister.

As to any similarities between Governments Exhibits 3 and 28, the way I see it, the Government formation, that is Exhibit 28, is a little wilder than that of Exhibit 3 and, then, too, there is the difference there of the threads in Exhibit 28. I am a great deal like Mr. Hargitt I can't distinguish the markings on Number 3. I can't distinguish the marks on it. There are some marks there. I don't know whether it is soil or what. I can't distinguish whether there is a color to it or not.

And the Defendants Here Rested.

And the United States Here Rested.

Indianapolis, Indiana,
Friday, November 13, 1936,
Nine-Thirty O'Clock A. M.

The Court met pursuant to adjournment and the trial was resumed as follows:

The Court: You may proceed.

137 Mr. Jeffrey: If the Court please, with the consent of the United States Attorney, may the record show that, prior to the close of the defendants' case, the defendants, and each of them, offer in evidence DEFENDANTS' EXHIBITS 1, 1-A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B?

May they be shown in evidence?

Mr. Caughran: Yes sir.

The Court: Yes.

The said DEFENDANTS' EXHIBITS NOS. 1, 1-A, 2, 3. 4, 5, 7, 8, 9, 9-A, and 9-B, so offered, were admitted and read in evidence.

The Court: Now, as to this motion for a directed verdict, that was filed yesterday evening on the part of the defendants my thought is, gentlemen, that, so far as the first count of this indictment, which charges these defendants with violating that section of the statute pertaining to the making of impressions, the statute means that they should make such an impression as could be used in the making of counter-

feit money. I think the evidence fails to show that the impressions that were made by these defendants are such impressions as could be used for that purpose. It is more of a transfer of the ink from one paper to another and could not be used for the making of money to pass as genuine money.

Therefore, under that situation, it becomes my duty, at this time, to direct that you return a verdict of not guilty, so far as the first count is concerned. I wonder if this first gentleman, Mr. Wheeling, will sign this form of verdict on behalf of the jury: "We, the jury, find the defendants Ralph Raynor and Chett Fowler not guilty as to Count I." That is only the first count. Will you just step up and sign that, please?

138 (The juror signed said verdict as requested.)

The Court: I will show the motion sustained as to Count I and overruled, with an exception, as to Count II.

I want to caution you, gentlemen, at this time, that the action of the Court in this regard should not influence you in any way in arriving at your verdict as to Count II, which is having in their possession paper similar to that used by the United States Government and which may be used for the purpose of making money. That is the count that is left in the case, Count II, and, as I say, I want to caution you not to permit the action of the Court on Count I to influence you in any way in arriving at your verdict as to Count II.

I think that is clear, now, is it not?

Mr. Caughran: I think it is, your Honor.

The Court: It will not be necessary, I would say, to take a great deal of time in argument of the case.

(Arguments to the jury were presented by counsel for the respective parties.)

139 THE COURT'S INSTRUCTIONS TO THE JURY.

The Court: Gentlemen, the prosecution in this case was begun on the return of an indictment by the Federal Grand Jury on October 24 of this year.

The indictment is in two counts, which I explained to you at the time you were accepted as jurors in the case. You were directed to return a verdict for the defendants as to

Count I, the Court, at that time, explaining to you the reason for giving that direction, and I caution you again, at this time, that the action of the Court, with reference to Count I, should not be considered by you in determining the guilt or innocence of these defendants on the charge contained in Count II of the indictment.

So far as the law is concerned, you gentlemen should accept that as the Court gives it to you, but keep in mind that you are the sole judges of the facts and the weight and the credit that you are to give to the testimony of any of the witnesses that have appeared here before you.

The indictment, as it stands now,—and I am speaking, when I use the term "indictment," of Count II—charges that these defendants, on or about the 9th day of October of this year, after the Secretary of the Treasury of the United States had adopted a distinctive paper for the obligations and other securities of the United States, had in their possession, in Rooms 607 and 1015 Severin Hotel, in the City of Indianapolis, similar paper which was adapted to the making of such obligations and other securities, and that this paper was in their possession without authority of the Secretary of the Treasury or of any other officer of the United States.

140 Now, to this indictment, gentlemen, the defendants in this case have each been arraigned in open court and have entered their pleas of not guilty and, upon the issues thus joined, the burden is upon the Government to prove their guilt beyond a reasonable doubt before you can convict them.

So far as the return of the indictment is concerned, I say to you, now, that you should not consider that as any evidence in the case; that is to say, when one is to be prosecuted for the commission of an offense against the Government, the criminal procedure provides that there must first be returned an indictment. That is simply the preferring of the charge against the defendants and, when that charge has once been preferred, as it has in this case, by the return of an indictment, then the burden is upon the Government to prove the material allegations contained in the indictment—that is, that the defendants are guilty as charged in the indictment—beyond a reasonable doubt before you can convict them. That is true because, when one is charged with the commission of a crime, he is presumed to be innocent and that presumption follows him throughout the trial, step by

step, until such time, if that time arrives in the trial of a case, as he is proven guilty beyond any reasonable doubt.

You hear lawyers sometimes speak a great deal about the term "reasonable doubt" to such an extent that you may feel that there is something mysterious about that term, something that you cannot understand. Now, that is not true at all. "Reasonable doubt" does not mean much more
141 than the term itself would indicate to a person of ordinary intelligence. When you are attempting to find out the truth about something of which you do not have personal knowledge, something that you did not see yourself, you cannot be absolutely certain about it. The criminal law does not require that you be absolutely certain about guilt of the defendants, but you must be certain to the extent known as removing from your mind all reasonable doubt as to their guilt. Therefore, if, after hearing all of the evidence in this case, you have a doubt, you have a misgiving as to the guilt of these defendants to such an extent that you would hesitate to act in a matter where you were required to act or not, in a matter where some of your friends or loved ones might be concerned, then you can say that there is a reasonable doubt as to the guilt of the defendants and they should be acquitted. If, on the other hand, after hearing all the evidence and considering all the facts and circumstances presented in the case, you have an abiding faith in the guilt of these defendants to such an extent that you would not hesitate to act in a matter where you were required to act or not, in a matter where you might, or some of your friends might be concerned, then you can say that all reasonable doubt has been removed from your minds and they should be convicted.

I said to you a moment ago that you are the sole judges of the facts and the weight and the credit that you are to give to the testimony of the witnesses in this case. I cannot lay down any rule for you to follow in determining whom you are going to believe and whom you are not going to believe or what the facts are. You are all business men. You are men of affairs in your own communities or you would
142 not be here on this jury. You have had experience, in your every day life, in determining the facts in matters of which you did not have personal knowledge, in determining the weight and credit that you are going to give to statements of some individual with whom you are in contact, and the more experience you have had, gentlemen, in your

every day life, in such matters, the better you are enabled to sit in a jury box, in a Court of Justice, and look into the faces of the witnesses and determine the weight and credit you are going to give to the testimony of these witnesses, and who is testifying truthfully and the ones who may be testifying falsely.

Of course, you will take into consideration, in determining the weight and credit of the testimony of any of the witnesses, the interest they may have in the outcome of the trial, the intelligence of such witnesses, the opportunity that they may have had to determine the facts about which they testify, and such other facts as will assist you in determining whom you are going to believe and whom you are not going to believe and the weight and credit that you are going to give to the testimony of any witness or witnesses.

Now, the defendants in this case, gentlemen, did not testify in their own behalf. They had a right, under the law, to testify, or not, as they saw fit, but they did not testify. You should not consider that fact in determining their guilt or innocence because, under the law, as I say, they had a right to testify or not, as they saw fit, and the fact that they saw fit not to testify should not be considered by you in determining their guilt or innocence.

143 Now, we come to the statute which these defendants are charged by the Government with having violated.

In order to be convicted in a court of the United States, the defendants must be convicted of the violation of some statute of the United States. These men are not being charged with operating a confidence game. They are violating a statute of the United States, and that statute says that, "Whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States," shall be guilty of an offense and be punished as prescribed in that section of the statute.

Now, let us analyze that statute just a moment, gentlemen, to see what it means. I think, after you have examined that statute carefully, you will find that your duties are limited to the determination of one or two questions. First, the indictment charges that the Secretary of the Treasury of the

United States has adopted certain distinctive paper for the purpose of making its obligations, its securities. Now, if you believe the testimony, all of the evidence in this case, undisputed, you will find that the Government has adopted a distinctive paper for that purpose. Therefore, under the evidence in this case, you would be justified in starting with the fact that that provision of the statute has been met.

You will then pass to the question of whether or not these defendants had in their possession paper, first, which was
144 similar to that which was adopted by the Secretary of the Treasury of the United States for making these obligations; second, if they had that paper in their possession, then the next question is whether or not that paper was adapted to the making of such obligations. Therefore, I think the evidence shows, in this case, undisputed, that these defendants had in their possession Exhibit No. 3, which has been introduced in evidence and which is the paper which the Government says is similar to that adopted by the Secretary of the Treasury, and that that paper, the Government says, is adapted to use in making such securities.

The fact that there was just one paper introduced in evidence in this case, gentlemen, should not influence you in arriving at your verdict because the statute does not say that the person must have in his possession a ream of paper or any certain amount of paper, but it says that if he has in his possession paper which is similar to that used by the United States, adapted to the use prescribed, then he is guilty as charged in the second count, of this indictment.

The question, then, of course, for you to determine is, first, whether or not Exhibit 3 was paper similar to that which had been adopted by the Secretary of the Treasury; second, if, so, whether it is adapted to the use of making obligations of the United States. The question is very simple. First, determine whether or not the paper, Exhibit 3, is similar and, if so, second, whether or not it is adapted to the use of making such obligations. If you answer both of these questions in the affirmative, then these defendants are guilty as charged in the indictment. On the other hand, if you answer either of them in the negative,—that is, if it is not
145 similar, or if similar, it is not adapted—then, of course, neither of them has violated this section of the statute of the United States.

The law does not say, gentlemen, that this paper, which they had in their possession, must be the same identical paper

as that which the Government has adopted for the use. It says it shall be similar to that which is adopted.

You saw these exhibits. You saw Exhibit 28, which is, under the evidence in this case, a piece of the paper which has been adopted by the Secretary of the Treasury of the United States. That evidence is undisputed. Accepting that as true, then it is for you to say whether or not, under the evidence in this case, Exhibit No. 3, which is the paper that the Government charges is similar and is adapted to the use for making money, is similar and so adapted and, if so, then, of course, you have one duty to perform, and that is to find these defendants guilty.

The statute does not say that this paper, in order to be similar, necessarily has to contain threads in it. It might be similar and have markings on it which would lead one to believe that it is the genuine paper as adopted by the Secretary of the Treasury.

You heard all of the evidence, gentlemen. It is not necessary for me to comment upon it any further. Of course, you will weigh that evidence. You heard the witnesses testify. It is for you to say what weight and credit you are going to give to their testimony, and, if you believe that these men violated this statute of the United States, it is your duty to convict them, and, in determining that question, take into consideration all of the evidence in this case bearing upon the question of whether or not they had in their possession
146 paper which was similar to that adopted by the Secretary of the Treasury and, if so, whether or not it is adapted to the use of making securities or Government certificates in violation of the law.

These men are not charged with counterfeiting; that is, making counterfeit money. They are charged, as I have said before, with having in their possession this paper.

"Adapted," as defined, means suitable, fit, correspond. Now, you should have no difficulty in determining the question whether or not this paper, Exhibit 3, is similar to the genuine paper. This definition of the term "adapted" does not mean that it is paper that the Government will have in its possession for making money, but the question is whether or not it is similar paper and is adapted to the making of money to pass in circulation.

Now, you are charged, gentlemen, with one responsibility in this case. It did not take a great while to try it. It is,

however, an important case. It is important to the Government of the United States. It is important to these defendants. Your only duty is to determine whether or not these defendants, are guilty as charged in the indictment. One of the defendants may be guilty and the other not. They both may be guilty or they both may be not guilty. That is a question for you to determine and you must determine that, gentlemen, upon the evidence, without any prejudice either for or against these defendants, for or against the Government, but, determine this question solely, squarely on the evidence that has been adduced in this case and, when you have arrived at your verdict, forms of which will be furnished you, have the foreman, whom you shall select when you
147 go to your jury room, sign that verdict and report to the Bailiff, in whose charge you will be, and you will be brought into court for the purpose of publishing that verdict.

Any exceptions?

Mr. Caughran: No exceptions.

Mr. Jeffrey: Yes, your Honor, I have one or two.

The defendants, and each of them, wish to object to that portion of the Court's instruction wherein it told the jury that the undisputed evidence shows the defendants had in their possession Exhibit 3 and that it was similar to and adapted to making United States obligations.

The Court: I did not say that it was similar to or adapted to.

Mr. Jeffrey: Well, perhaps I misunderstood the Court, but that is the way I thought that the instruction read.

The Court: If I did so state, I did not intend to. I said, "The undisputed evidence was"—and you will agree with me —"that they had this paper in their possession."

Mr. Jeffrey: That is right. Then I think the instruction continued, and I agree that the Court did not intend to say it,—

The Court: Well, strike it out, if I said that: that it was undisputed that this was similar paper and adapted to the use of the Government in making these certificates, you will disregard that statement. I did not intend to say it.

Mr. Jeffrey: I know it was inadvertent, but that is the way I think the Court said it.

Now, the defendants, and each of them, wish to object to that portion of the Court's instruction wherein it said that the

law does not say the paper must be the same identical
148 paper as has been adopted, it must be similar, for the reason that, under our construction of the statute, we think that is not correct and that it must be exactly like the paper.

The Court: All right. You may have an exception.

Mr. Jeffrey: All right.

The defendants object, and each of them object, to that portion of the Court's instruction wherein it said that the statute does not say that, in order to be similar, the paper must have threads in it, that the paper might be similar and only have markings such as to lead one to believe it was paper that had been adopted by the Secretary of the Treasury.

The Court: What is your objection to that?

Mr. Jeffrey: The objection is to the construction placed by the Court upon the meaning of the word "similar," that it might be similar and only have markings such as would lead one to believe that it was proper and that it had been adopted by the Secretary of the Treasury.

The Court: All right. You may have an exception.

Mr. Jeffrey: An exception to that. All right.

The Court: Is that all?

Mr. Jeffrey: That is all of the objections. Now, I do have one or two instructions I would like to ask the Court to give.

The defendants, and each of them, request the Court to instruct the jury that criminal statutes must be construed strictly against the Government and favorably as to the liberty of the citizen.

The Court: That is elementary.

Mr. Jeffrey: I think the jury is entitled to know that.

The Court: That is elementary.

Mr. Jeffrey: That is elementary to us, but I doubt if
149 it is to the jury.

The Court: It may be given if the defendants' attorney insists upon it. That is the law, gentlemen, and you should accept it as an instruction in the case.

Mr. Jeffrey: The defendants, and each of them, respectfully request the Court to instruct the jury that the statute does not intend to include all the various kinds of paper, suitable for use as typewriter paper, in order to make possession thereof unlawful, unless it is like the distinctive Government paper and suitable to be used for the purpose for which the Government paper is used.

The Court: That is the law, gentlemen. You may accept it. I think I have covered all of that. I think it is hardly necessary to go over these and just give your words, when we have given them.

Mr. Jeffrey: I am trying to exclude any that you have given. Some of them I think you have excluded.

Here is one I think the Court did not touch on.

The defendants, and each of them, respectfully request the Court to instruct the jury that the fact that either of the defendants may have, as argued by the United States Attorney, told someone that this was genuine paper, does not make it so unless, in fact, it was genuine paper.

The Court: Let that be given as an instruction of the Court.

Mr. Jeffrey: And one other, and that is all, if your Honor please.

The defendants, and each of them, respectfully request the Court to instruct the jury that the paper must be judged
150 as it is, and the fact that it might or might not be taken to Washington and put through Government presses and then passed as money is not sufficient to say that it is now, of was, adapted to the making of Government obligations or securities.

The Court: You may accept that, gentlemen, as the instruction of the Court.

Anything else?

Mr. Jeffrey: That is all.

The Court: Swear the Bailiff.

(Whereupon, The Bailiff was Sworn and the Jury Retired to Deliberate Upon its Verdict.)

151 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

CERTIFICATE OF JUDGE.

The foregoing Bill of Exceptions duly proposed by defendants Ralph Raynor and Chett Fowler, and each of them, and duly agreed upon by the respective parties hereto, having been duly presented to the Court within the time allowed by law and by the rules and orders of this Court, duly and regularly made in their behalf, is hereby settled, allowed, signed

and authenticated, as in the proper form and as conforming to the truth and is the true Bill of Exceptions herein, being a true transcript of all the evidence, offers of counsel, objections thereto, rulings of the Court thereon and the Exceptions thereto, with the Charge of the Court and the Exceptions thereto, and is hereby made a part of the record in this case.

It is further ordered that the exhibits of the Government numbered 3 and of the Defendants' numbered 1, 1-A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B, introduced in evidence in the trial of the above entitled cause and now in custody of the Clerk of this Court, shall be transmitted to the Circuit Court of Appeals for the Seventh Circuit, at Chicago, and shall be
152 deemed to be included as a part of the foregoing Bill of Exceptions, with the same effect and in all respects as if incorporated in said Bill of Exceptions.

Dated at Indianapolis, Indiana this 28th day of December, 1936.

Robert C. Baltzell,
United States District Judge.

50 And afterwards to wit: at the November Term of said Court on the 28th day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit: Filed Dec. 28, 1936.

Come now the defendants, by their attorneys, and file motion to transmit original exhibits to the Circuit Court of Appeals, which motion is as follows:

51 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

MOTION TO TRANSMIT ORIGINAL EXHIBITS TO THE CIRCUIT COURT OF APPEALS.

The defendants, Ralph Raynor and Chett Fowler, respectfully represent to the Court that there were a number of exhibits introduced in evidence, and that it is impractical to include photographs or copies of said exhibits in the transcript of the evidence, for the reason that said exhibits are certain pieces of paper, and that the Circuit Court of Appeals should have before it, for its consideration, the original pieces of paper constituting said exhibits.

Said defendants, therefore, move the Court for an order directing the Clerk of this Court to send to the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, at Chicago, Government's Exhibit No. 3, and Defendants' Exhibits Nos. 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B, as original evidence or exhibits in this cause.

George R. Jeffrey,
Wm. E. Risley,
Attorneys for Defendants, Ralph Raynor and Chett Fowler.

21 And afterwards to wit: at the November Term of said Court on the 19th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit: Filed Nov. 19, 1936.

Comes now Val Nolan, Esq., Attorney for the United States, and comes also the defendant, Ralph Raynor, in his own proper person, and by his attorney, and files notice of appeal, which notice is as follows:

22 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

NOTICE OF APPEAL.

Name and address of appellant:
Ralph Raynor, 4727 Greenwood Avenue, Chicago.

Name and address of appellant's attorney:
George R. Jeffrey, 207 Hume Mansur Building, Indianapolis, Indiana.

Offense:
Violating the provisions of 18 U. S. C. A. 264 by possessing paper similar to a distinctive paper adopted by the Secretary of the Treasury for making Government obligations, without authority of the Secretary of the Treasury.

Date of Judgment:
November 16, 1936.

Brief description of judgment or sentence:
Ralph Raynor (4) years in a Federal penitentiary.

23 Name of prison where now confined, if not on bail:
Defendant released on bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above-mentioned on the grounds set forth below.

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury is contrary to the evidence.

III.

That there was no sufficient competent evidence to support the verdict as to the defendants, or either of them.

IV.

The evidence adduced does not prove nor tend to prove the allegations in count two of the Indictment, and fails to show that either defendant had in his possession any paper as described in this count of the Indictment.

V.

There is a fatal variance between the proof, and the allegations contained in the second count of the indictment.

24 VI.

There was no evidence to prove that part of the allegations of the second count of the Indictment which reads as follows, to-wit; "without the authority of the Secretary of the Treasury or any other proper officer of the United States."

VII.

The evidence adduced does not prove nor tend to prove the allegations in count two (2) of the Indictment, and fails to show that either defendant had any paper in his possession without the authority of the Secretary of the Treasury or any other proper officer of the United States.

VIII.

The undisputed evidence shows that the paper possessed by each of these defendants was of the kind and quality sold generally by stores to the trade and that these defendants and the public generally were entitled to possess this paper without authority of the Secretary of the Treasury.

IX.

The Court erred in not granting the separate and several motions of each of the defendants for a peremptory instruction to the judy to render a verdict of not Guilty at the close of the whole case.

X.

The Court erred in permitting the Government to introduce in evidence over the objections of each of the defendants, Government's exhibit number 3.

XI.

The Court erred in refusing to permit the witness
25 Galligher to answer questions propounded on cross examination as to whether there was any effort on the part of either of the defendants to counterfeit, or whether it was ever their intention to counterfeit, and in sustaining the objections of the Government to such questions asked upon cross examination.

XII.

The Court erred in refusing to permit either John O. Burton, a Government witness, or John Keller a witness for the defendants, to make a test of exhibit 3 by using an eraser in an effort to determine whether certain marks referred to could be removed.

XIII.

The Court erred in admitting irrelevant, incompetent, prejudicial and immaterial testimony offered by and on behalf of the Government, particularly with reference to the exhibits offered in behalf of the Government at the trial of this case, wherein and whereby certain papers, containing so called impressions, vessels, and bottles containing some substance, wood press, glass, and other paraphernalia where admitted in evidence and exhibited to the jury over the objections and exceptions of each of these defendants at the time, and which were of such nature as to impress the jury with the belief that these defendants might have been counterfeiters, and were of such nature as to unduly prejudice the

jury against the defendants to the extent that neither of them could have a fair trial or impartial verdict in so far as the jury was concerned.

XIV.

That the Court erred in charging the jury as follows,
26 "the law does not say the paper must be the same identical paper that has been adopted—it must be similar", to which portion of the Court's charge each of the defendants then and there objected and excepted.

XV.

That the Court erred in charging the jury as follows, "the statute does not say that in order to be similar the paper must have threads in it—it might be similar and only have markings such as to lead one to believe it was paper that had been adopted by the Secretary of the Treasury", to which portion of the Court's charge each of the defendants then and there objected and excepted.

XVI.

The Court erred in over-ruling the defendants' objection to the following question, asked by the Government of John O. Burton while he was testifying as a witness for the Government: Q. "From your experience in the Treasury Department, analyzing paper and so on, state whether or not, in your opinion, if the Government exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a $20.00 Treasury note, that paper, exhibit 3, is such a paper that would pass currency in the general trade of the country." to which ruling of the Court the defendants at the time excepted, and in permitting the witness to make the answer, "in my opinion, it is."

XVII.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross examination of John O. Burton while he was testifying as a witness for the Government: Q. "and if those

marks on Government's exhibit 3 are red and blue pencil
27 marks and not silk threads, then the Government's exhibit 3 is not adaptable for the use or for the making of Government obligations, under the rules adopted by the Secretary of the Treasurer for that distinctive paper? Is that true?'' and in refusing to permit said witness to answer said question, to which ruling of the Court the defendants at that time excepted.

XVIII.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross examination of John O. Burton while he was testifying as a witness for the Government: Q. ''Mr. Witness will you please take Government's exhibit 3—now, don't do this yet—it is just a question. Will you please take Government's exhibit 3 and take an eraser and endeavor to erase one of those red and blue markings and see if you can erase it from the surface of that paper?'' and in refusing to permit said witness to answer said question, to which rulings of the Court the defendants at the time excepted.

(Signed) Ralph Raynor.

Dated: November 19, 1936.

Receipt of a copy of the above and foregoing notice of appeal is hereby acknowledged this 19th day of November, 1936.

Val Nolan,
United States Attorney.

ed Nov. 19, 936.

30 (Entry for November 19, 1936, continued).

And comes also the defendant, Chett Fowler, in his own proper person, and by his attorney, and files notice of appeal, which notice is as follows:

31 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

NOTICE OF APPEAL.

The name and address of the appellant is, Chett Fowler, 75th Street & Keystone Avenue, Indianapolis.

The name and address of the appellant's attorney is, William E. Reiley, 1502 Railway Exchange Building, Indianapolis, Indiana.

Offense—Having in his possession, after a distinctive paper had been adopted by the Secretary of the Treasury, similar paper, adapted to making obligations and securities of the United States.

The judgment was entered on the 16th day of November, 1936.

The judgment or sentence was two years in the Federal Prison at Atlanta, Georgia.

The appellant is now on bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above-mentioned on the grounds set forth below.

Chett Fowler,
Appellant.

Dated November 19, 1936.

The grounds for appeal are:

1. That the said judgment is contrary to law.
2. That the said judgment is contrary to law and the evidence.
3. That the Court erred in overruling the motion for a new trial.

Received a copy of above, this 19th day of November, 1936.

Val Nolan,
U. S. District Attorney.

45 And afterwards to wit: at the November Term of said Court on the 21st day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit: Filed Dec. 21, 1936.

Come now the defendants, by their attorneys, and file assignment of errors, which is as follows:

46 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

ASSIGNMENT OF ERRORS.

The defendants Ralph Raynor and Chett Fowler, having appealed from the judgment of this Court to the United States Circuit Court of Appeals for the Seventh Circuit, and believing and alleging that in the record of the proceedings in the above entitled cause there is manifest error which occured upon the trial of said cause and upon which they rely for the prosecution of the appeal herein, assign as such error the following:

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury is contrary to the evidence.

III.

The evidence adduced does not prove nor tend to prove the allegations in count two of the Indictment, and fails to show that either defendant had in his possession any paper as described in this count of the Indictment.

IV.

There is a fatal variance between the proof, and the
47 allegations contained in the second count of the Indictment.

V.

There was no evidence to prove that part of the allegations of the second count of the Indictment which reads as follows, to-wit: "without the authority of the Secretary of the Treasury or any other proper officer of the United States."

VI.

The Court erred in not granting the separate and several motions of each of the defendants for peremptory instruction to the jury to render a verdict of not Guilty at the close of the whole case.

VII.

The Court erred in permitting the Government to introduce in evidence over the objections of each of the defendants, Government's Exhibits numbered 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, 22, 24, 26, 27, to which ruling of the Court the Defendants at the time excepted.

VIII.

That the Court erred in charging the jury as follows, "the law does not say, gentlemen, that this paper, which they had in their possession, must be the same identical paper as that which the Government has adopted for the use. It says it shall be similar to that which is adopted", to which portion of the Court's charge each of the Defendants then and there objected and excepted.

48 IX.

That the Court erred in charging the jury as follows, "the statute does not say that this paper, in order to be similar, necessarily has to contain threads in it. It might be similar and have markings on it which would lead one to believe that it is the genuine paper as adopted by the Secretary of the Treasury," to which portion of the Court's charge each of the Defendants then and there objected and excepted.

X.

The Court erred in over-ruling the defendants' objection to the following question, asked by the Government of John O. Burton while he was testifying as a witness for the Government: Q. "From your experience in the Treasury Department, analyzing paper and so-on, state whether or not, in your opinion, if the Government Exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a $20.00 Treasury note, that paper, exhibit 3, is such paper that would pass currency in the general trade of the country." to which ruling of the Court the defendants at the time excepted, and in permitting the witness to make the answer, "in my opinion, it is."

XI.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross-examination of John O. Burton while he was testifying as a witness for the Government: Q. "and if those marks on Government's Exhibit 3 are red and blue pencil marks
49 and not silk threads, then the Government's Exhibit 3 is not adaptable for the use or for the making of Government obligations, under the rules adopted by the Secretary of the Treasury for that distinctive paper? Is that true?" and in refusing to permit said witness to answer said question, to which ruling of the Court the defendants at that time excepted.

XII.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross-examination of John O. Burton while he was testifying as a witness for the Government: Q. "Mr. Witness will you please take Government's Exhibit 3—now, don't do this yet—it is just a question. Will you please take Government's Exhibit 3 and take an eraser and endeavor to erase one of those red and blue markings and see if you can erase it from the surface of that paper?" and in refusing to permit said witness to answer said question, to which rulings of the Court the defendants at the time excepted.

XIII.

The Court erred in denying the separate and several motions of the defendants, Ralph Raynor and Chett Fowler for a new trial.

Wherefore, the defendants, Ralph Raynor and Chett Fowler, pray that the judgment herein, for the errors aforesaid in the record and proceedings herein, may be reversed and annuled, and altogether held for nothing.

George R. Jeffrey,
Wm. E. Reiley,
Attorneys for Defendants, Ralph Raynor and Chett Fowler.

ed Nov. 19, 936.

20 And afterwards to wit: at the November Term of said Court on the 17th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, each in his own proper person, and by his attorney, and it is ordered by the Court that the appeal bond of defendant, Ralph Raynor, be, and the same is, hereby fixed at $5000.00; and that the appeal bond of defendant, Chett Fowler, be, and the same is, hereby fixed at $2500.00.

28 (Entry for November 19, 1936, continued.)

And said defendant also files appeal bond in the sum of Five Thousand Dollars ($5000.00), with the United States Fidelity & Guaranty Company as surety thereon, which bond is approved by the Court and is as follows:

29 Know All Men By These Presents,

That Ralph Raynor, of the County of Cook, State of Illinois, as principal, and United States Fidelity and Guaranty Company, Baltimore, Maryland, the former of the County of Marion, State of Indiana, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000.00), to be paid to the United States of America, to which payment well and

truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

—Sealed with our seals and dated this 19th day of November, in the year of our Lord one thousand nine hundred and thirty-six.

Whereas, lately on the sixteenth day of November, 1936, at the November Term of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, in a cause pending in said Court between the United States of America, Plaintiff, and Ralph Raynor, Defendant, a judgment and sentence was rendered against said Ralph Raynor and the said Ralph Raynor has been granted an appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago thirty days from and after the date thereof, which citation has been duly served.

Now the Condition of Said Obligation Is Such, that if the said Ralph Raynor shall appear in person in the United States Circuit Court of Appeals for the Seventh Circuit when said cause is reached for argument or when required by law or rule of said Court, and from day to day thereafter in said Court, until said cause shall be finally disposed of and shall abide by and obey the judgment and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence aforesaid, as said Court may direct, and shall abide by and pay any fines and costs commanded by said judgment, in the event the said judgment and sentence against him shall be affirmed or the appeal shall be dismissed; and if he shall prosecute his appeal with effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea; and if he shall appear for trial in the District Court of the United States for the Southern District of Indiana on such day or days as may be appointed for retrial by said District Court and from day to day and term to term thereafter and abide by and obey all orders of said Court in the event the said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Seventh Cir-

cuit, then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

(Seal) Ralph Raynor (Seal)
United States Fidelity & Guaranty Company, (Seal)
by Paul C. Smith,
Attorney in Fact. (Seal)

Approved: November 19, 1916.
Robert C. Baltzell,
United States District Judge,
Southern District of Indiana.

ed Nov. 19, 1936. 32 (Entry for November 19, 1936, Continued.)

And said defendant also files appeal bond in the sum of Twenty Five Hundred Dollars ($2500.00), with Mrs. Mable Bruce and Mrs. Emma Feier as sureties thereon, which bond is approved by the Court and is as follows:

33 Know All Men by These Presents,

That Chett Fowler, of the County of Marion, State of Indiana, as principal, and Mrs. Emma Feier and Mrs. Mable Bruce, of the County of Marion, State of Indiana, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Twenty-Five Hundred Dollars ($2500.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of November, in the year of our Lord one thousand nine hundred and thirty-six.

Whereas, lately on the sixteenth day of November, 1936, at the November Term of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, in a cause pending in said Court between the United States of America, Plaintiff, and Chett Fowler, Defendant, a judgment and sentence was rendered against said Cheet Fowler and the said Chett Fowler has been granted an appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment and sentence in the aforesaid suit, and a citation

directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago thirty days from and after the date thereof, which citation has been duly served.

Now the Condition of Said Obligation Is Such, That if the said Chett Fowler shall appear in person in the United States Circuit Court of Appeals for the Seventh Circuit when said cause is reached for argument or when required by law or rule of said Court, and from day to day thereafter in said Court, until said cause shall be finally disposed of and shall abide by and obey the judgment and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence aforesaid, as said Court may direct, and shall abide by and pay any fines and costs commanded by said judgment, in the event the said judgment and sentence against him shall be affirmed or the appeal shall be dismissed; and if he shall prosecute his appeal with effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea; and if he shall appear for trial in the District Court of the United States for the Southern District of Indiana on such day or days as may be appointed for retrial by said District Court and from day to day and term to term thereafter and abide by and obey all orders of said Court in the event the said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Seventh Circuit, then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

Chett Fowler (Seal)
Mrs. Mable Bruce (Seal)
Mrs. Emma Feier (Seal)

Approved: November 19, 1936.
Robert C. Baltzell,
United States District Judge,
Southern District of Indiana.

34 United States of America
Southern District of Indiana } ss:

Mrs. Emma Feier of Indianapolis, Indiana, the surety on the within bond, being duly sworn on her oath, says that she is worth in her own name and right in unencumbered real

estate, situate in the District aforesaid, and over and above the entire amount of her indebtedness and legal exemption, the sum of Six Thousand Dollars ($6,000.00), which is the fair cash value of the said real estate.

Mrs. Emma Feier.

Subscribed and sworn to before me this 18th day of Nov., 1936.

(Seal) Alva H. Voris.

My commission expires April 13, 1939.

United States of America
Southern District of Indiana } ss:

Mrs. Mable Bruce of Indianapolis, Indiana, the surety on the within bond, being duly sworn on her oath, says that she is worth in her own name and right in unencumbered real estate, situate in the District aforesaid, and over and above the entire amount of her indebtedness and legal exemption, the sum of Six Thousand Dollars ($6,000.00), which is the fair cash value of the said real estate.

Mrs. Mable Bruce.

Subscribed and sworn to before me this 18th day of Nov., 1936.

(Seal) Alva H. Voris.

My commission expires April 13, 1939.

41 And afterwards to wit: at the November Term of said Court on the 14th day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Come now the defendants Ralph Raynor and Chett Fowler by their counsel, and comes also the United States of America by the United States Attorney, and the defendants within the time allowed by law and by the rules of the United States Supreme Court and of the United States Circuit Court of Appeals for the Seventh Circuit, and within thirty days after the taking of the Appeal in this case, file their petition for an extension of time in which to file their Bill of Exceptions which is as follows, to-wit:

42 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

PETITION TO EXTEND TIME TO FILE BILL OF EXCEPTIONS.

Come now the defendants Ralph Raynor and Chett Fowler, and respectfully represent to the Court that they have been diligent in their efforts to prepare the Bill of Exceptions in this case and that the same is at this time prepared, but that they have not had an opportunity to check said Bill for typographical errors, or to present the same to the United States Attorney for his approval.

That the interest of justice requires an extension of time in order that the bill may be presented to the United States Attorney for his inspection, and for such additions as he may see fit to make, or to recommend.

Wherefore these defendants within the time allowed by law and by the rules of the United States Supreme Court, and of the United States Circuit Court of Appeals for the Seventh Circuit, respectfully petition the Court for an order extending time within which to settle and file their Bill of Exceptions herein, and within which to file their Assignment of Errors,

and within which the Clerk of this Court may file
43 the transcript of the record with the Clerk of the Circuit Court of Appeals for the Seventh Circuit, to and including the thirtieth day of December, 1936.

George R. Jeffrey,
Wm. E. Reiley,
Attorneys for Defendants Ralph Raynor and Chett Fowler.

44 (Entry for December 14, 1936, Continued.) Entered Dec. 14 1936.

And the Court having examined said petition, finds that the interest of justice requires that said petition should be granted.

It is, therefore, Ordered, that the time within which the defendants may settle and file their Bill of Exceptions, and the time within which they may file their Assignment of Errors, and the time within which the Clerk of this Court shall transmit the transcript of the record to the Clerk of the Circuit Court of Appeals for the Seventh Circuit, shall be, and the same is hereby extended to and including the thirtieth day of December, 1936.

Filed Dec. 7. 1936.

35 And afterwards to wit: at the November Term of said Court on the 7th day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Come now the appellants, Ralph Raynor and Chett Fowler, by their counsel, and comes also the United States of America, appellee, by the United States Attorney, and said parties file their stipulation that the appeal herein may be presented to the Circuit Court of Appeals upon one transcript of the record, including one assignment of errors and one bill of exceptions, and that the same may be heard and determined jointly upon this appeal upon one record.

36 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

STIPULATION FOR JOINT RECORD.

Whereas the above-named appellants, Ralph Raynor and Chett Fowler, were Indicted jointly and tried jointly upon one record,

It is hereby stipulated and agreed by and between the above-named appellants, by their counsel, and the United States of America, appellee, by the United States Attorney within and for the Southern District of Indiana, that the above matter may be presented to the Circuit Court of Appeals upon one transcript of the record, to be prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors, and one bill of exceptions, and that the same may be heard and determined jointly upon this appeal upon one record.

George R. Jeffrey,
Attorney for Ralph Raynor.
W. E. Reiley,
Attorney for Chett Fowler.
Val Nolan,
United States Attorney.

37 (Entry for December 7, 1936, Continued.)

And the Court having considered said stipulation, finds that it ought to be approved.

It is, therefore, Ordered, that the above matter be presented to the Circuit Court of Appeals upon one transcript of the record, to be prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors, and one bill of exceptions, and that the same be heard and determined jointly upon this appeal upon one record.

And said defendants also file joint praecipe for record, which is as follows:

38 In the District Court of the United States.

* * (Caption—6664) * *

JOINT PRAECIPE FOR RECORD TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

To the Clerk of the United States District Court for the Southern District of Indiana:

You will please prepare, certify and transmit a transcript of the record for the United States Circuit Court of Appeals for the Seventh Circuit, including the following items from the files and records of said Court, to be used on appeal from the judgment entered in the above entitled cause to the said Circuit Court of Appeals, to-wit:

1st. The Indictment in said cause.

2nd. The arraignment and plea of each of the defendants, Ralph Raynor and Chett Fowler.

3rd. The trial, the verdict and judgment as to each of the above-named defendants.

4th. The separate and several motions of each of the defendants, Ralph Raynor and Chett Fowler for instructions to the jury to return a verdict of "Not Guilty" as to each defendant, filed and presented at the close of all the evidence in the case, together with the ruling and order of the Court thereon.

39 5th. Instructions of the Court to the jury.

6th. The separate and several motions of each of the

defendants, Ralph Raynor and Chett Fowler, for a new trial, together with the ruling and the order of the Court thereon.

7th. The separate and several notices of each of the defendants, Ralph Raynor and Chett Fowler, of an appeal, and the joint assignment of errors, of the defendants Ralph Raynor and Chett Fowler.

8th. The appeal bond of each of the above-named defendants.

9th. The stipulation of the defendants, and the United States of America, for consolidation of cases for the purpose of preparing, and filing a joint transcript of the record, including a joint assignment of errors and a joint bill of exceptions, for appeal to and review by the Circuit Court of Appeals for the Seventh Circuit together with the order of Court thereon.

10th. The joint bill of exceptions of the above-named defendants.

11th. The joint petition for and the order enlarging the time within which the defendants shall procure to be settled and file with the clerk, the bill of exceptions herein.

12th. This Praecipe.

George R. Jeffrey,
Attorney for defendant Ralph Raynor.
W. E. Reiley,
Attorney for defendant Chett Fowler.

40 December 7, 1936.

Receipt is acknowledged of a copy of the attached Praecipe.

Val Nolan,
United States Attorney.
P.

153 United States of America
Southern District of Indiana } ss:
Indianapolis Division

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the above and foregoing is a true and full transcript of the record and proceedings in the cause of United States *vs.* Ralph Raynor, Chett Fowler alias Chess Fowler, No. 6664 Cr., according to the praecipe filed December 7, 1936, now remaining among the records of said Court in my office.

I further certify that the original Bill of Exceptions has been incorporated into said transcript.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis, this 28th day of December, 1936.

Albert C. Sogemeier,
Clerk, United States District Court,
Southern District of Indiana.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 107, inclusive, contain a true copy of the printed record, printed under my supervision and filed on January 6, 1937, on which record the following entitled causes were heard and determined: No. 6096, Ralph Raynor vs. The United States of America; No. 6097, Chett Fowler vs. The United States of America; October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 7th day of June, A. D. 1937.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
By F. J. CARRICK,
Chief Deputy Clerk.

At a regular term of The United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago in said Seventh Circuit, on the sixth day of October of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

And on, to wit, the 23rd day of November, 1936, there was filed in the office of the Clerk of this court a notice of appeal and grounds of appeal, which said notice of appeal and grounds of appeal are not copied here as the same appear on Pages 83 to 87, inclusive, of the printed record in this cause certified herewith.

And on the same day, to wit, the 23rd day of November 1936, there was filed in the office of the Clerk of this court a Clerk's statement of docket entries forwarded under Rule IV, which said Clerk's statement of docket entries is in the words and figures following, to wit:

Form of Clerk's Statement of Docket Entries to be Forwarded Under Rule IV.

151002—37——1

Form No. 3

District Court of the United States, Southern District of Indiana, Indianapolis Division

No. 6664

UNITED STATES

vs.

RALPH RAYNOR

Indictment for violation of the provisions of 18 U. S. C. A. 264 by possessing paper similar to a distinctive paper adopted by the Secretary of the Treasury for making Government obligations, without authority of the Secretary of the Treasury. Indictment filed October 24, 1936.

Plea to Indictment: November 7, 1936. Defendant files demurrer to Count 1. Defendant arraigned and pleads not guilty to Count 2. November 12, 1936. Demurrer and motion to quash overruled. Defendant arraigned and pleads not guilty to Count 1.

Trial by Jury: November 12, 1936. At conclusion of Government's evidence the defendants file motion for directed verdict. Overruled and exception. Evidence concluded. Defendants file motion for directed verdict.

Verdict: November 13, 1936. Defendant's motion for directed verdict sustained as to Count 1 and overruled as to Count 2. Exception. Directed verdict of not guilty on Count 1. Jury returns verdict of guilty as to Count 2.

Judgments: Four years Penitentiary, November 16, 1936.

Notice of Appeal filed November 19, 1936.

November 19, 1936.

Attest:

[SEAL] ALBERT C. SOGEMEIER, *Clerk.*

(Endorsed:) Filed Nov. 23, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 29th day of December 1936, there was filed in the office of the Clerk of this court a certificate to exhibits, which said certificate is in the words and figures following, to wit:

Original Exhibits in the Case of—

6664 Cr.

UNITED STATES

vs.

RALPH RAYNOR ET AL.

I, Albert C. Sogemeier, Clerk U. S. District Court for the Southern District of Indiana, do hereby certify that this envelope contains the

original exhibits in the above case as follows: Government's Exhibit 3; Defendants' Exhibits 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9–A, and 9–B, transmitted with the transcript on appeal in compliance with an order of Court entered December 28, 1936.

Witness my hand and the seal of said Court this 28th day of December 1936.

[SEAL] ALBERT C. SOGEMEIER, *Clerk.*

(Endorsed:) Filed Dec. 29, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 29th day of January 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Friday, January 29, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. John Elliott Byrne, counsel for appellant, and by Mr. Paul A. Pfister, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to wit, on the 23rd day of March 1937, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

March 23, 1937

EVANS, Circuit Judge, and LINDLEY and BRIGGLE, District Judges.

BRIGGLE, District Judge. The defendants were convicted in the District Court under the second count of an indictment charging that they "on or about the 9th day of October 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly and feloniously have in their possession * * * similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury or any other

proper officer of the Unied States." Defendants prosecute separate appeals, but as the same questions are involved in each they will be disposed of in one opinion.

The section of the statute under which defendants were convicted (Crim. Code Sec. 150, Title 18 U. S. C. A. Sec. 264) consists of one sentence, separated into seven distinct subdivisions by semi-colons. It is the last of these seven subdivisions with which we are here concerned, but for a better understanding the entire section is appended in the margin.[1] That portion here involved provides that "whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States * * *."

The pertinent facts are without substantial dispute and are as follows: The Secretary of the Treasury of the United States adopted in 1928 a distinctive paper for the printing of government obligations and securities, which was a high grade rag bond paper with short, fine, red and blue silk fibers impregnated. The silk fibers are placed in the pulp and distributed throughout the paper at the time of manufacture and are visible to the eye after the paper is manufactured and after the currency or obligations are printed. This distinctive paper is manufactured for the government under a contract with a private concern upon an ordinary paper machine. As it comes from the machine it is put under government guard, cut to the size specified, put

[1] SEC. 264. (Criminal Code, sec. 150) Using plates to print notes without authority; distinctive paper. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both. (R. S. Sec. 5430; Mar. 4, 1909, c. 321, Sec. 150, 35 Stat. 1116.)

in sealed cases and delivered under guard to Bureau of Printing and Engraving of the Treasury Department.

The defendants were found in possession of a small piece of paper, introduced in evidence as Government's Exhibit 3 which was a high grade bond paper, cut the size of ordinary currency and approximately the same color, weight, thickness, and opacity as the "distinctive" government paper. It "rattled" very much the same on crushing, had small, irregular red and blue lines on the surface (apparently pencil marks) made to imitate the red and blue silk fibers of the genuine, but did not in fact contain red and blue silk fibers. The record contains proof of many other facts concerning the maneuvers of defendants in an attempt to either produce counterfeit currency or to swindle other persons who might be willing to join them in some such unlawful scheme, all of which may have been pertinent to another count of the indictment on which the Court directed a verdict of not guilty, but have no direct bearing upon the count now before us and need not be detailed.

The decision turns upon the construction to be given the statute and particularly the word "similar" and the phrase "adapted to the making of any such obligation or other security." Appellants contend that the paper, the possession of which is prohibited by the statute is paper similar to the distinctive paper adopted by the Secretary of the Treasury and adapted to the making of genuine government obligations and securities. The District Attorney contends that the paper contemplated by the statute is paper, which if printed as a counterfeit obligation, would pass as currency in the general trade of the United States. Appellants assert that the test is not whether it would pass as currency in the general trade of the country, but whether it is in fact adapted to the making of valid government obligations.

Webster defines the word "similar" to mean "nearly corresponding, resembling in many respects, somewhat like." Winston's simplified dictionary says, "having a more or less marked resemblance or correspondence to one another or to something else, analogous, like but not exactly the same, of the same nature."

We think that "similar" does not import "exactly alike" but is to be understood in its usual and ordinary meaning of having a "marked resemblance" to, or of the same general nature, degree, or order. Under the facts, therefore, we think a jury was justified in saying that the paper in question was similar to the genuine government paper. This, however, is not sufficient—it must also be "adapted to the making of any such obligation or other security."

The recognized authorities define the transitive verb adapt to mean—to make suitable; cause to conform; make fit by alteration. They define the adjective adaptable to mean—easily fitted or made suitable; easily and quickly able to conform to new or strange circumstances; that can be adapted or can easily adapt itself. The word "adapted" is not specifically defined in the authorities but is the past tense of the transitive verb "adapt." Following through the meaning of the verb it may be said to indicate that the object referred

to has been made suitable; has been made to conform to; has been made fit by alteration.

The government urges a construction of the word "adapted" as though it means the same as "adaptable"—easily made suitable. It is to be noted, however, that Congress has chosen the word "adapted" and we cannot agree that it is synonymous with "adaptable." Rather, we think that it should be accorded its ordinary and commonly accepted meaning to connote something that has already been made fit for the purpose indicated. An application of this meaning indicates that Congress had in mind paper that had been made fit or suitable to the making of such obligations or securities and not paper that could be made fit or that was adaptable.

The words "such obligations or other security" are also involved. We think such words refer back to the genuine obligations and securities of the United States. These are the plain words of both the statute and the indictment. The defendants were not charged with possessing paper adapted to the making of counterfeit currency that might reasonably be expected to pass in the trade of the country, but were charged with possessing paper adapted to making genuine obligations of the United States. Under the facts the paper they possessed cannot be said to be adapted to the making of genuine obligations because it does not contain at least one feature of the "distinctive paper" adopted by the government, in that it contains no red and blue silk fibers. We think the argument of the District Attorney is directly in the face of the plain words of the statute. There is nothing in the Act to indicate that Congress was undertaking to outlaw possession of the numerous kinds of high grade bond paper that might reasonably be said to be "similar" to that officially adopted by the government but rather, we think, they were striking at the evil of someone unlawfully coming into possession of the genuine government paper. This is further borne out by the language of the Act "except under the authority of the Secretary of the Treasury or some other proper officer of the United States." No one would have occasion to request or receive authority from such public officials to possess any paper unless it were the genuine paper of the government. The Secretary of the Treasury would scarcely be called upon to grant authority to one to possess paper adapted only to the making of spurious obligations. Otherwise every manufacturer, merchant or printer, making, dealing in, or using the higher grade bond paper similar to that adopted by the government would be required under the terms of this act to gain the permission of the Secretary of the Treasury to lawfully possess such paper. No such situation was, of course, contemplated by Congress unless such paper is at the same time adapted to the making of such genuine obligations. Under the evidence before us much of the better grades of bond paper is so adapted except for the absence of the red and blue silk fibers.

On the other hand occasions arise where the Secretary of the Treasury may feel obliged to grant authority to some person to possess the genuine government paper. A chemist from the Bureau of Engraving and Printing appeared as a witness for the government in the instant case and produced as an exhibit what he testified was the genuine paper upon which the government prints its twenty dollar bills. For him to thus possess and produce the prohibited paper became lawful only by virtue of the authority granted him under this provision of the Act. We thus have a concrete application of this clause which gives it a meaning harmonious with the construction contended for by appellants.

It is to be noted that the bare possession of the prohibited paper completes the offense defined in the statute. It need not be possessed with the intent to counterfeit the obligations of the United States, and it need not be put to any other use. Not so with the offenses defined in the preceding paragraphs of the same section. In the first paragraph it is the use of the prohibited article; in the second it is the making of a plate in the likeness of a government plate; in the third it is the selling or bringing into the United States of any prohibited plate with the intent that it be used for a purpose other than the printing of government obligations; in the fourth, it is the possession of the prohibited plate with the intent to use in counterfeiting such obligations; in the fifth, it is the having possession of a spurious obligation with the intent to sell or use same; in the sixth, it is the making or selling of the prohibited article. In the seventh paragraph, however, which is the one under consideration, it is the possession of paper similar to that adopted by the government and adapted to the making of government obligations that is made the offense. Paper of the kind possessed by the defendants is in common use—it is on sale by every dealer and is possessed by thousands of citizens. Paper of the kind used by the government in printing currency is of a distinctive type in that it has impregnated red and blue silk fibers, a feature not present in commercial paper. It is not for sale by any merchant and cannot lawfully be purchased or possessed except by authority of the Secretary of the Treasury or other proper officer. It is faithfully guarded by the government from the moment of its manufacture until it is released for circulation as government obligations. Obviously it was the possession of paper, thus suitable for and adapted to the making of the genuine obligations that Congress was outlawing. It is freely conceded that the paper in question contained no such fibers. That someone had caused red and blue pencil marks to be placed upon the paper in an effort to simulate the genuine is immaterial so far as the offense charged in the second count of the indictment is concerned. It does not require an expert to observe at a single glance that such markings are not red and blue silk fibers.

So far as we are advised this particular clause of the Section under consideration has been before but one other Court of review. The

Second Circuit in the case of Krakowski v. U. S., 161 Fed. 88 (decided in 1908) had occasion to consider the same provision and there said: "The statute contemplates the adoption by the Secretary of the Treasury of a distinctive paper for government obligations and provides that it shall be unlawful, without authority from the Secretary or other proper official, to possess any paper similar to the distinctive paper and likewise adapted to the making of government securities. A paper which resembles the distinctive paper and also is of such character as to be suitable for the imprint of government obligations comes precisely within the terms of the statute. * * * The words 'adapted to the making of such obligations' clearly refer to the obligations of the United States just before mentioned in the statute. There is no room for reading anything else into the statute and no basis for doing so. Nothing indicates that Congress had in mind the possession of the many kinds of paper adapted to the making of counterfeit money, especially poor counterfeits."

We are in accord with this reasoning and believe that under the undisputed evidence here the defendants were not guilty of the offense defined by the statute and charged in the Second Count of the Indictment. There has been a misapprehension of the proper section of the statute applicable to the facts herein.

The judgment is reversed and the cause remanded.

Reversed and remanded.

LINDLEY, District Judge, dissenting:

The statutory construction adopted, it seems to me, is strained and over-literal and does violence to the intent of Congress. That legislative body, manifestly, was dealing with the possession of articles capable of use in counterfeiting obligations of the United States which might receive the ordinary citizen to whom such counterfeits might come. Thus we find condemned "plates, stones or other thing", in the possession of anyone other than the government, adapted or capable of being used in counterfeiting. We find condemned also engravings, photographs, prints or impressions of similar character and paper "similar" to official paper, "adapted to the making of any such obligation." The evil in all these sought to be reached lies not in their use in making bona fide obligations but in their quality of being susceptible of improper use in making plausible counterfeit obligations, such as might readily deceive the public.

So the construction adopted rightfully concludes that the condemned paper need not be "exactly like" official paper. But to me the forbidden article was meant to include all fabrications of such similitude to official paper as, when used, might easily deceive, not the expert, but every day business men or other citizens amongst whom the criminal hopes to circulate counterfeits. The paper in question is included within such rule.

Nor can I agree that it is plainly discernible that the blue and red tracings are superficial pencil marks. After careful examination of

the marks with the aid of a magnifying glass, I am wholly uncertain as to whether they are woven in the fabric or traced. Citizens, among whom counterfeits circulate, do not ordinarily use magnifying glasses. I think the judgment should be affirmed.

Teste:

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to wit, the 23rd day of March 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, March 23, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said District Court.

And afterwards, to wit, on the 14th day of April 1937, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

And afterwards, to wit, on the 22nd day of April 1937, there was filed in the office of the Clerk of this court an answer to petition for rehearing, which said answer to petition for rehearing is not copied here.

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And afterwards, to wit, on the 11th day of May 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, May 11, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana; Indianapolis Division

It is ordered by the Court that the petition for rehearing in this cause be and the same is hereby denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 12, inclusive, contain a true copy of the proceedings had and papers filed (excepting appearances of counsel, briefs of counsel, the petition for rehearing and the answer thereto), in the case of Ralph Raynor vs. the United States of America, No. 6096, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventh day of June A. D. 1937.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
By K. J. CARRICK, *Chief Deputy Clerk.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago in said Seventh Circuit, on the sixth day of October of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

And on, to wit, the 24th day of November 1936, there was filed in the office of the Clerk of this court a notice of appeal and grounds of appeal, which said notice of appeal and grounds of appeal are not copied here as the same appear on Page 88 of the printed record in this cause certified herewith.

And on the same day, to wit, the 24th day of November 1936, there was filed in the office of the Clerk of this court a Clerk's statement of docket entries forwarded under Rule IV, which said Clerk's statement of docket entries is in the words and figures following, to wit:

Form of Clerk's Statement of Docket Entries to be Forwarded Under Rule IV

Form No. 3

District Court of the United States, Southern District of Indiana, Indianapolis Division

No. 6664

UNITED STATES

vs.

CHETT FOWLER

Indictment for violation of the provisions of 18 U. S. C. A. 264 by possessing paper similar to a distinctive paper adopted by the Secretary of the Treasury for making Government obligations, without authority of the Secretary of the Treasury. Indictment filed October 24, 1936.

Arraignment: October 30, 1936.

Plea to Indictment: Not guilty on October 30, 1936.

Trial by Jury: November 12, 1936. At conclusion of Government's evidence the defendants file motion for directed verdict. Overruled and exception. Evidence concluded. Defendants file motion for directed verdict.

Verdict: November 13, 1936. Defendant's motion for directed verdict sustained as to Count 1 and overruled as to Count 2. Exception. Directed verdict of not guilty on Count 1. Jury returns verdict of guilty as to Count 2.

Judgment: Two years Penitentiary, November 16, 1936.
Notice of Appeal filed November 19, 1936.
Attest:
[SEAL] ALBERT C. SOGEMEIER, *Clerk.*
NOVEMBER 19, 1936.

[Endorsed:] Filed Nov. 24, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 19th day of December 1936, there was filed in the office of the Clerk of this court a certified copy of order of the District Court of the United States extending time for filing bill of exceptions, etc., which said certified copy of order of the District Court is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Indiana, ss.:

District Court of the United States for the Southern District of Indiana, Indianapolis Division

Nov. Term, 1936. No. 6664

UNITED STATES

v.

RALPH RAYNOR, CHETT FOWLER, ALIAS CHESS FOWLER

At Indianapolis, in said District, on the 14th day of December 1936, before the Honorable Robert C. Baltzell, Judge

Come now the defendants Ralph Raynor and Chett Fowler by their counsel, and comes also the United States of America by the United States Attorney, and the defendants within the time allowed by law and by the rules of the United States Supreme Court and of the United States Circuit Court of Appeals for the Seventh Circuit, and within thirty days after the taking of the Appeal in this case, file their petition for an extension of time in which to file their Bill of Exceptions which is as follows, to-wit:

(H. I.)

And the Court having examined said petition, finds that the interest of justice requires that said petition should be granted.

It is, therefore, ordered, that the time within which the defendants may settle and file their Bill of Exceptions, and the time within which they may file their Assignment of Errors, and the time within which the Clerk of this Court shall transmit the transcript of the record to the Clerk of the Circuit Court of Appeals for the seventh

Circuit, shall be, and the same is hereby extended to and including the thirtieth day of December 1936.

UNITED STATES OF AMERICA,
Southern District of Indiana, Indianapolis Division, ss:

I, Albert G. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of an order extending time for filing bill of exceptions and for filing transcript on appeal, made and entered December 14, 1936, In the Cause of United States vs. Ralph Raynor, Chett Fowler, alias Chess Fowler, No. 6664 Cr. now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis this 17th day of December, A. D. 1936.

ALBERT C. SOGEMEIER,
Clerk.

[SEAL] By ESSA PHILLIPS,
Deputy Clerk.

[Endorsed:] Filed Dec. 19, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 29th day of December 1936, there was filed in the office of the Clerk of this court a certificate to exhibits, which said certificate is in the words and figures following, to wit:

Original exhibits in the case of

6664 Cr.

UNITED STATES

vs.

RALPH RAYNOR ET AL.

I, Albert C. Sogemeier, Clerk U. S. District Court for the Southern District of Indiana, do hereby certify that this envelope contains the original exhibits in the above case as follows: Government's Exhibit 3; Defendants' Exhibits 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B, transmitted with the transcript on appeal in compliance with an order of Court entered December 28, 1936.

Witness my hand and the seal of said Court this 28th day of December, 1936.

[SEAL] ALBERT C. SOGEMEIER, *Clerk.*

[Endorsed:] Filed Dec. 29, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 28th day of January 1937, there was filed in the office of the Clerk of this court a letter from Mr. William

E. Reiley to the Clerk of this court, which said letter is in the words and figures following, to wit:

William E. Reiley, Lawyer

Railway Exchange Building,
Indianapolis, Indiana, January 27, 1937.

Telephone Riley 7166

Clerk of the United States Circuit Court of Appeals, Seventh District, Chicago, Illinois

Re: Chett Fowler *vs.* United States of Amer. #6097.

Dear Sir: I have heretofore entered my appearance in the above-entitled cause and meant to file a brief on behalf of Chett Fowler. About a week ago it became quite apparent that unfortunately he could not raise the money to have the brief printed, and I abandoned the case, with his consent, and wrote to Mr. John Elliott Byrne of Chicago, asking him if he would not, as a gratuity, represent Fowler and write a brief on his behalf in connection with the case of Ralph Raynor (No. 6096, your records, both cases having been tried together). Yesterday I received a copy of Mr. Byrne's brief and I note with satisfaction that he did include Chett Fowler's name in his brief, and will no doubt argue the case for both of the defendants in the court below.

I am writing you this in order to acquaint you with the facts so that if question arises, you may acquaint the court with the facts.

The reason I did not write a brief and appear to argue the same, was that Chett Fowler unfortunately could not raise the money to have the brief printed. For that reason, I am withdrawing my appearance and regret that this could not be done sooner, but the time was very short and up until the last minute I hoped that he could get the money for the brief, and then I waited a few days to see if Mr. Byrne was including Fowler before acquainting you with the facts.

If it is of any interest to the Court, Fowler paid me no fee. He gave me a note which I cancelled and returned to him.

WER:WB

Yours truly,

William E. Reiley.

[Endorsed:] Filed Jan. 28, 1937. Frederick G. Campbell, Clerk.

And afterward, to wit, on the 29th day of January 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Friday, January 29, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. John Elliott Byrne, counsel for appellant, and by Mr. Paul A. Pfister, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterward, to wit, on the 23rd day of March 1937, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

March 23, 1937

EVANS, Circuit Judge, and LINDLEY and BRIGGLE, District Judges

BRIGGLE, District Judge: The defendants were convicted in the District Court under the second count of an indictment charging that they "on or about the 9th day of October 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly, and feloniously have in their possession * * * similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury or any other proper officer of the United States." Defendants prosecute separate appeals, but as the same questions are involved in each they will be disposed of in one opinion.

The section of the statute under which defendants were convicted (Crim. Code, Sec. 150, Title 18, U. S. C. A., Sec. 264) consists of one sentence, separated into seven distinct subdivisions by semi-colons. It is the last of these seven subdivisions with which we are here concerned, but for a better understanding the entire section is appended in the margin.[2] That portion here involved provides that "whoever

[2] SEC. 264. (Criminal Code, sec 150) Using plates to print notes without authority; distinctive paper. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States

shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States * * *."

The pertinent facts are without substantial dispute and are as follows: The Secretary of the Treasury of the United States adopted in 1928 a distinctive paper for the printing of government obligations and securities, which was a high grade rag bond paper with short, fine, red and blue silk fibers impregnated. The silk fibers are placed in the pulp and distributed throughout the paper at the time of manufacture and are visible to the eye after the paper is manufactured and after the currency or obligations are printed. This distinctive paper is manufactured for the government under a contract with a private concern upon an ordinary paper machine. As it comes from the machine it is put under government guard, cut to the size specified, put in sealed cases and delivered under guard to Bureau of Printing and Engraving of the Treasury Department.

The defendants were found in possession of a small piece of paper, introduced in evidence as Government's Exhibit 3 which was a high grade bond paper, cut the size of ordinary currency and approximately the same color, weight, thickness, and opacity as the "distinctive" government paper. It "rattled" very much the same on crushing, had small, irregular red and blue lines on the surface (apparently pencil marks) made to imitate the red and blue silk fibers of the genuine, but did not in fact contain red and blue silk fibers. The record contains proof of many other facts concerning the maneuvers of defendants in an attempt to either produce counterfeit currency or to swindle other persons who might be willing to join them in some such unlawful scheme, all of which may have been pertinent to another count of the indictment on which the Court directed a verdict of not

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or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security, issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both. (R. S. Sec. 5430; Mar. 4, 1909, c. 321, Sec. 150, 35 Stat. 1116.)

guilty, but have no direct bearing upon the count now before us and need not be detailed.

The decision turns upon the construction to be given the statute and particularly the word "similar" and the phrase "adapted to the making of any such obligation or other security." Appellants contend that the paper, the possession of which is prohibited by the statute, is paper similar to the distinctive paper adopted by the Secretary of the Treasury and adapted to the making of genuine government obligations and securities. The District Attorney contends that the paper contemplated by the statute is paper which, if printed as a counterfeit obligation, would pass as currency in the general trade of the United States. Appellants assert that the test is not whether it would pass as currency in the general trade of the country, but whether it is in fact adapted to the making of valid government obligations.

Webster defines the word "similar" to mean "nearly corresponding, resembling in many respects; somewhat like." Winston's simplified dictionary says, "having a more or less marked resemblance or correspondence to one another or to something else, analogous, like but not exactly the same, of the same nature."

We think that "similar" does not import "exactly alike" but is to be understood in its usual and ordinary meaning of having a "marked resemblance" to, or of the same general nature, degree, or order. Under the facts, therefore, we think a jury was justified in saying that the paper in question was similar to the genuine government paper. This, however, is not sufficient—it must also be "adapted to the making of any such obligation or other security."

The recognized authorities define the transitive verb adapt to mean—to make suitable; cause to conform; make it by alteration. They define the adjective adaptable to mean—easily fitted or made suitable; easily and quickly able to conform to new or strange circumstances; that can be adapted or can easily adapt itself. The word "adapted" is not specifically defined in the authorities but is the past tense of the transitive verb "adapt." Following through the meaning of the verb it may be said to indicate that the object referred to has been made suitable; has been made to conform to; has been made fit by alteration.

The government urges a construction of the word "adapted" as though it means the same as "adaptable"—easily made suitable. It is to be noted, however, that Congress has chosen the word "adapted" and we cannot agree that it is synonymous with "adaptable." Rather, we think that it should be accorded its ordinary and commonly accepted meaning to connote something that has already been made fit for the purpose indicated. An application of this meaning indicates that Congress had in mind paper that had been made fit or suitable to the making of such obligations or securities and not paper that could be made fit or that was adaptable.

The words "such obligations or other security" are also involved. We think such words refer back to the genuine obligations and securi-

ties of the United States. These are the plain words of both the statute and the indictment. The defendants were not charged with possessing paper adapted to the making of counterfeit currency that might reasonably be expected to pass in the trade of the country, but were charged with possessing paper adapted to making genuine obligations of the United States. Under the facts the paper they possessed cannot be said to be adapted to the making of genuine obligations because it does not contain at least one feature of the "distinctive paper" adopted by the government, in that it contains no red and blue silk fibers. We think the argument of the District Attorney is directly in the face of the plain words of the statute. There is nothing in the Act to indicate that Congress was undertaking to outlaw possession of the numerous kinds of high grade bond paper that might reasonably be said to be "similar" to that officially adopted by the government but rather, we think, they were striking at the evil of someone unlawfully coming into possession of the genuine government paper. This is further borne out by the language of the Act "except under the authority of the Secretary of the Treasury or some other proper officer of the United States." No one would have occasion to request or receive authority from such public officials to possess any paper unless it were the genuine paper of the government. The Secretary of the Treasury would scarcely be called upon to grant authority to one to possess paper adapted only to the making of spurious obligations. Otherwise every manufacturer, merchant, or printer making, dealing in or using the higher grade bond paper similar to that adopted by the government would be required under the terms of this act to gain the permission of the Secretary of the Treasury to lawfully possess such paper. No such situation was, of course, contemplated by Congress unless such paper is at the same time adapted to the making of such genuine obligations. Under the evidence before us much of the better grades of bond paper is so adapted except for the absence of the red and blue silk fibers.

On the other hand occasions arise where the Secretary of the Treasury may feel obliged to grant authority to some person to possess the genuine government paper. A chemist from the Bureau of Engraving and Printing appeared as a witness for the government in the instant case and produced as an exhibit what he testified was the genuine paper upon which the government prints its twenty dollar bills. For him to thus possess and produce the prohibited paper became lawful only by virtue of the authority granted him under this provision of the Act. We thus have a concrete application of this clause which gives it a meaning harmonious with the construction contended for by appellants.

It is to be noted that the bare possession of the prohibited paper completes the offense defined in the statute. It need not be possessed with the intent to counterfeit the obligations of the United States, and it need not be put to any other use. Not so with the offenses de-

fined in the preceding paragraphs of the same section. In the first paragraph it is the use of the prohibited article; in the second it is the making of a plate in the likeness of a government plate; in the third it is the selling or bringing into the United States of any prohibited plate with the intent that it be used for a purpose other than the printing of government obligations; in the fourth, it is the possession of the prohibited plate with the intent to use in counterfeiting such obligations; in the fifth, it is the having possession of a spurious obligation with the intent to sell or use same; in the sixth, it is the making or selling of the prohibited article. In the seventh paragraph however, which is the one under consideration, it is the possession of paper similar to that adopted by the government and adapted to the making of government obligations that is made the offense. Paper of the kind possessed by the defendants is in common use—it is on sale by every dealer and is possessed by thousands of citizens. Paper of the kind used by the government in printing currency is of a distinctive type in that it has impregnated red and blue silk fibers, a feature not present in commercial paper. It is not for sale by any merchant and cannot lawfully be purchased or possessed except by authority of the Secretary of the Treasury or other proper officer. It is faithfully guarded by the government from the moment of its manufacture until it is released for circulation as government obligations. Obviously it was the possession of paper, thus suitable for and adapted to the making of the genuine obligations that Congress was outlawing. It is freely conceded that the paper in question contained no such fibers. That someone had caused red and blue pencil marks to be placed upon the paper in an effort to simulate the genuine is immaterial so far as the offense charged in the second count of the indictment is concerned. It does not require an expert to observe at a single glance that such markings are not red and blue silk fibers.

So far as we are advised this particular clause of the Section under consideration has been before but one other Court of review. The Second Circuit in the case of Krakowski v. U. S., 161 Fed. 88 (decided in 1908) had occasion to consider the same provision and there said: "The statute contemplates the adoption by the Secretary of the Treasury of a distinctive paper for government obligations and provides that it shall be unlawful without authority from the Secretary or other proper official, to possess any paper similar to the distinctive paper and likewise adapted to the making of government securities. A paper which resembles the distinctive paper and also is of such character as to be suitable for the imprint of government obligations comes precisely within the terms of the statute. * * * The words 'adapted to the making of such obligations' clearly refer to the obligations of the United States just before mentioned in the statute. There is no room for reading anything else into the statute and no basis for doing so. Nothing indicates that Congress had in mind the possession of the many kinds of paper adapted to the making of counterfeit money, especially poor counterfeits."

We are in accord with this reasoning and believe that under the undisputed evidence here the defendants were not guilty of the offense defined by the statute and charged in the Second Count of the Indictment. There has been a misapprehension of the proper section of the statute applicable to the facts herein.

The judgment is reversed and the cause remanded.

Reversed and remanded.

LINDLEY, District Judge, dissenting: The statutory construction adopted, it seems to me, is strained and over-literal and does violence to the intent of Congress. That legislative body, manifestly, was dealing with the possession of articles capable of use in counterfeiting obligations of the United States which might deceive the ordinary citizen to whom such counterfeits might come. Thus we find condemned "plates, stones, or other thing", in the possession of anyone other than the government, adapted or capable of being used in counterfeiting. We find condemned also engravings, photographs, prints, or impressions of similar character and paper "similar" to official paper, "adapted to the making of any such obligation." The evil in all these sought to be reached lies not in their use in making bona fide obligations but in their quality of being susceptible of improper use in making plausible counterfeit obligations, such as might readily deceive the public.

So the construction adopted rightfully concludes that the condemned paper need not be "exactly like" official paper. But to me the forbidden article was meant to include all fabrications of such similitude to official paper as, when used, might easily deceive, not the expert, but every day business men or other citizens amongst whom the criminal hopes to circulate counterfeits. The paper in question is included within such rule.

Nor can I agree that it is plainly discernible that the blue and red tracings are superficial pencil marks. After careful examination of the marks with the aid of a magnifying glass, I am wholly uncertain as to whether they are woven in the fabric or traced. Citizens, among whom counterfeits circulate, do not ordinarily use magnifying glasses. I think the judgment should be affirmed.

And on the same day, to wit, the 23rd day of March 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, March 23, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said District Court.

And afterwards, to wit, on the 14th day of April 1937, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

And afterwards, to wit, on the 22nd day of April 1937, there was filed in the office of the Clerk of this court an answer to petition for rehearing, which said answer to petition for rehearing is not copied here.

And afterwards, to wit, on the 11th day of May 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, May 11, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

It is ordered by the Court that the petition for rehearing in this cause be and the same is hereby denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the forego-

ing typewritten and printed pages, numbered from 1 to 14, inclusive, contain a true copy of the proceedings had and papers filed (excepting appearances of counsel, briefs of counsel, petition for a rehearing and answer thereto) in the case of Chett Fowler, appellant vs. The United States of America, appellee, No. 6097, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Seventh day of June A. D. 1937.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
By F. J. CARRICK,
Chief Deputy Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1937

125 Supreme Court of the United States

No. 146. October Term 1937

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

126 Supreme Court of the United States

No. 147. October Term, 1937

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1937